

No. 13400

United States
Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, LOCAL No. 504,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

SEP 25 1952

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Respondent Union, International As-
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United States of America
Before the National Labor Relations Board

Twentieth Region

Case No. 20-CA-328

In the Matter of

WESTINGHOUSE ELECTRIC CORPORATION

and

CLYDE W. SCHEUERMANN, an Individual.

Case No. 20-CB-102

In the Matter of

INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 504

and

CLYDE W. SCHEUERMANN, an Individual.

CONSOLIDATED COMPLAINT

It having been charged by Clyde W. Scheuermann, an individual, herein called Scheuermann, that Westinghouse Electric Corporation and International Association of Machinists, Local No. 504, herein called respectively Westinghouse and Union and collectively Respondents, have engaged in, and are engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C.A. 141 et

seq. (Supp. July 1947) herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by the Rules and Regulations of the National Labor Relations Board, Series 5, as amended, Section 203.15, hereby issues his Complaint upon the charges, duly consolidated, pursuant to the provisions of Section 203.33 (b) of the above Rules and Regulations and alleges as follows:

I.

Westinghouse is a Pennsylvania corporation with its principal office at Pittsburgh, Pennsylvania. It operates plants throughout the United States, including a plant at Sunnyvale, California. At the Sunnyvale plant, Westinghouse manufactures electrical and steam equipment, including turbines, transformers, and switch gear. In 1948, Westinghouse purchased for its Sunnyvale plant sheet metal, wire, insulation material, castings, ball bearings, oil, and other materials and supplies valued in excess of \$1,000,000.00, of which approximately 50 per cent was shipped to its Sunnyvale plant from points outside California. In 1948, Westinghouse sales from its Sunnyvale plant exceeded \$8,000,000.00, of which approximately 50 per cent was shipped from its Sunnyvale plant to points outside of California.

II.

International Association of Machinists, Local No. 504, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

III.

Until on or about November 11, 1949, Scheuermann was employed by Westinghouse as a mechanic.

IV.

On or about November 11, 1949, the Union caused Westinghouse to discharge Scheuermann, by requesting such discharge pursuant to the terms of its collective bargaining agreement with Westinghouse, although the Union had previously terminated Scheuermann's membership for reasons other than non-payment of dues or membership fees.

V.

On or about November 11, 1949, Westinghouse discharged Scheuermann for non-membership in the Union, although Westinghouse had reasonable grounds for believing that membership in the Union had been terminated for reasons other than non-payment of dues or initiation fees.

VI.

By the act set forth in paragraph IV above, the Union did cause, and is causing, Westinghouse to discriminate against Scheuermann in violation of Section 8(a)(3) of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(b)(2) of the Act.

VII.

By the acts set forth in paragraph IV above, the Union did restrain or coerce, and is restraining or

coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in and is thereby engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

VIII.

By the acts set forth in paragraph V above, Westinghouse did discriminate, and is now discriminating, in regard to the hire and tenure of employment and the terms and conditions of employment of Scheuermann, thereby encouraging membership in the Union and discouraging membership in other labor organizations, and did thereby engage in, and is now thereby engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

IX.

By the acts set forth in paragraph V above, Westinghouse did interfere with, restrain and coerce, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

X.

The acts of Respondents as set forth in paragraphs IV and V above, occurring in connection with the operations of Westinghouse described in paragraph I above, have a close, intimate and substantial relation to trade, traffic and commerce

among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XI.

The aforesaid acts of Westinghouse as set forth in paragraph V above, and the aforesaid acts of the Union as set forth in paragraph IV above, and each of them, constitute unfair labor practices within the meaning of Section 8(a)(1) and (3), and Section 8(b)(1) (A) and 8(b)(2), and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 8th day of June, 1950, issues his Consolidated Complaint against Westinghouse Electric Corporation and International Association of Machinists, Local No. 504, Respondents herein.

[Seal] /s/ GERALD A. BROWN,
Regional Director, National Labor Relations Board,
821 Market Street, San Francisco 3, California.

Received in evidence as General Counsel's Exhibit No. 1-G, September 5, 1950.

United States of America
Before the National Labor Relations Board
Twentieth Region

[Title of Causes.]

ANSWER OF WESTINGHOUSE ELECTRIC
CORPORATION TO CONSOLIDATED
COMPLAINT

Comes now respondent Westinghouse Electric Corporation, a corporation, and, in answer to the Consolidated Complaint on file in the above-entitled matters, admits, denies and alleges as follows:

I.

Answering paragraphs IV, V, VI, VII, VIII, IX, X and XI of the Consolidated Complaint, respondent Westinghouse Electric Corporation denies generally and specifically each and every, all and singular, the allegations contained in said paragraphs.

As and for a second and further defense respondent Westinghouse Electric Corporation alleges:

I.

Prior to the 10th day of October, 1949, Westinghouse Electric Corporation negotiated a collective bargaining agreement with International Association of Machinists, District Lodge 93, Local 504, which said agreement was executed on the 10th day of October, 1949. A copy of said agreement is attached hereto, marked Exhibit "A" and by this reference made a part hereof. Said Collective bar-

gaining agreement was entered pursuant to the certification of the aforesaid union by the National Labor Relations Board on or about July 19, 1949, in Consolidated Cases. Nos. 20-RM-31, 20-RM-33, and 20-RC-473, and the certification of the said Board on or about September 7, 1949, in case No. 20-UA-1943, permitting the execution of the union shop agreement. The said agreement applied to the employment of Clyde W. Scheuermann, the Charging Individual herein.

II.

On or about November 11, 1949, the above union requested that the said Clyde W. Scheuermann, be discharged pursuant to the terms of the aforesaid agreement on the ground that he had failed to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring and retaining membership in said union. Mr. Scheuermann was discharged pursuant to the terms of the aforesaid collective bargaining agreement and pursuant to the said request.

Wherefore, respondent Westinghouse Electric Corporation Prays That the complaint against it be dismissed.

/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for Respondent Westinghouse Electric Corporation.

Duly verified.

Received in evidence as General Counsel's Exhibit No. 1-J, September 5, 1950.

United States of America
Before the National Labor Relations Board
Twentieth Region

[Title of Causes.]

RESPONDENT UNION'S ANSWER TO
CONSOLIDATED COMPLAINT

Comes now the International Association of Machinists, Local Lodge No. 504, herein called Respondent Union, and in answer to the consolidated Complaint issued under date of June 8, 1950, admits, denies and alleges as follows:

I.

The facts concerning this item are unknown to Respondent Union. This section of the Complaint should be answered by Respondent Company.

II.

Respondent Union admits that it is a labor organization within the meaning of Section 2, subsection (5) of the Act.

III.

Respondent Union admits that Scheuermann ceased to be an employee of Westinghouse at its Sunnyvale Plant on or about November 11, 1949.

IV.

Respondent Union admits that it requested the termination of Clyde W. Scheuermann and others on or about November 11, 1949, for failure to comply with Section 2 of its agreement with Westing-

house. Respondent Union also admits that it had, in accordance with its laws, tried and expelled Clyde W. Scheuermann for good cause prior to certification by the Board on July 19, 1949, in Case No. 20-RC-473.

V.

Respondent Union states that it is without knowledge as to the reasons or decisive factors motivating Westinghouse in making its decision to terminate Clyde W. Scheuermann, and it knows still less about the extent of the Employer's knowledge concerning the relationship of Scheuermann to Respondent Union.

VI.

Respondent Union denies each and every allegation, and each and every conclusion in paragraph VI of the Complaint that either it or Respondent Company is or has, because of the allegations in paragraph IV of the Complaint, violated Section 8 (a) (3) or Section 8 (b) (2) of the Act.

VII.

Respondent Union denies that it has in any way violated Section 8 (b) (1) (A) of the Act.

VIII.

Respondent Union denies that the allegations of paragraph V of the Complaint, even if true, constitute a violation of Section 8 (a) (3) by Respondent Company.

IX.

Respondent Union denies that the allegations of paragraph V of the Complaint, even if true, constitute a violation of Section 8 (a) (1) by Respondent Company.

X.

Respondent Union believes that the Westinghouse Electric Corporation including the business of its Sunnyvale Plant is within the jurisdiction of the National Labor Relations Board, however, Respondent Union denies that the allegations of paragraphs IV and V of the Complaint, even if true, have a close, intimate and substantial relation to trade, traffic and commerce, or that those acts tend to lead to labor disputes burdening and obstructing commerce or the free flow of commerce.

XI.

Respondent Union denies that any act alleged in the Complaint constitutes an unfair labor practice or a violation of any section of the Act regardless of whether the act is true or false, or whether the act was by Respondent Union or Respondent Company.

Dated at Oakland, California, July 12, 1950.

INTERNATIONAL ASSOCIATION
OF MACHINISTS

/s/ A. C. McGRAW,

Grand Lodge Representative for and in Behalf of
Local Lodge No. 504.

State of California,
County of Alameda—ss.

Subscribed and sworn to before me Marie E. Alves, a Notary Public in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, on this 12th day of July, 1950, at Oakland, Calif.

[Seal] /s/ MARIE E. ALVES,

Notary Public in and for the County of Alameda,
State of California.

My Commission expires July 2, 1953.

Received July 14, 1950.

Received in evidence as General Counsel's
Exhibit No. 1-K, September 5, 1950.

Before the National Labor Relations Board
Division of Trial Examiners
Washington, D. C.

Case No. 20-CA-328

In the Matter of
WESTINGHOUSE ELECTRIC CORPORATION (SUNNYVALE PLANT)

and

CLYDE W. SCHEUERMANN, an Individual.

Case No. 20-CB-102

In the Matter of
INTERNATIONAL ASSOCIATION OF
MACHINISTS, LOCAL No. 504

and

CLYDE W. SCHEUERMANN, an Individual.

HARRY BAMFORD, ESQ.,

For the General Counsel.

BROBECK, PHLEGER & HARRISON, by
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Of San Francisco, Calif.,

For the Respondent Company.

A. C. McGRAW, ESQ.,

Of Oakland, Calif.,

For the Respondent Union.

CLYDE W. SCHEUERMANN, ESQ.,

Of Alma, Calif.,

Pro se.

Before: Frederic B. Parkes, II, Trial Examiner.

INTERMEDIATE REPORT

Statement of the Case

Upon charges duly filed by Clyde W. Scheuermann, herein called the Complainant, the General Counsel of the National Labor Relations Board,¹ by the Regional Director of the Twentieth Region (San Francisco, California), issued his consolidated complaint dated June 8, 1950, against Westinghouse Electric Corporation, (Sunnyvale Plant), herein referred to as the Respondent Company,² and against International Association of Machinists, Local No. 504, herein called the Respondent Union,³ alleging that the Respondent Company had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, and that the Respondent Union had engaged and was engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) and Section 2 (6) and (7) of the Act. Copies of the charges, complaint, and

¹The General Counsel and his representative at the hearing are referred to as the General Counsel. The National Labor Relations Board is herein called the Board.

²The name of the Respondent Company appears herein in accordance with an amendment to the pleadings, granted during the course of the hearing, to set forth the correct name of the Respondent Company.

³The Respondent Company and the Respondent Union are at times collectively referred to herein as the Respondents.

notice of hearing were duly served upon the Respondent Company, the Respondent Union, and the Complainant.

With respect to the unfair labor practices, the consolidated complaint, as amended during the course of the hearing,⁴ alleged that (1) on or about September 9, 1949, during the course of negotiations leading up to a new collective bargaining contract, the Respondent Union attempted to cause the Respondent Company to discharge employees Floyd King, Charles V. Pachorik, and Clyde Scheuermann, and did cause the Respondent Company to discharge employee John Marovich, by requesting such discharges because they had expressed a preference for Independent Westinghouse Workers Union, herein called the IWWU, or had criticized the Respondent Union; (2) on or about November 11, 1949, the Respondent Union caused the Respondent Company to discharge Clyde Scheuermann, by requesting such discharge pursuant to the terms of the Respondents' collective bargaining agreement, although the Respondent Union had previously terminated the membership of and denied membership to Scheuermann for reasons other than the nonpayment of dues or initiation fees; (3) on or about September 20, 1949, the Respondent Company discharged Marovich pursuant to the request of the Respondent Union; and (4) on or about

⁴On September 8, 1950, during the course of the hearing, the undersigned granted a motion of the General Counsel to amend the complaint. The principal matters covered by these amendments related to the allegations in respect to the Respondent Union's attempt on September 9, 1949, to cause the Respondent Company to discharge King,

November 11, 1949, the Respondent Company discharged Scheuermann for nonmembership in the Respondent Union, although the Respondent Company had reasonable grounds for believing that his membership in the Respondent Union had been terminated and denied for reasons other than non-payment of dues or initiation fees. The complaint further alleged that by the foregoing conduct, the Respondent Company has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act and the Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) and Section 2 (6) and (7) of the Act.

Each of the Respondents duly filed an answer, amended during the course of the hearing to cover the additional matters brought in issue by amendments to the original complaint, denying that either of them had engaged in any of the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held from August 29, 1950,⁵ to September 20, 1950, at San Fran-

Pachorik, Scheuermann, and Marovich and the Respondent Company's discharge of Marovich on September 20, 1949. The complaint was also amended in minor respects not detailed herein.

⁵On February 27, 1941, the undersigned issued an order correcting the transcript to show that the hearing opened on August 29, 1950, and not August 23, 1950, and that on September 1, 1950, the undersigned granted on the record a motion made by the General Counsel with the concurrence of the other parties that the hearing be continued until September 5, 1950.

cisco and Sunnyvale, California, before Frederic B. Parkes, 2nd, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent Company were represented by counsel and the Respondent Union by an official representative. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the conclusion of the General Counsel's case in chief, the Respondent Company moved that the complaint be dismissed in its entirety or in the alternative that the complaint's allegations in regard to Marovich be dismissed. At the same time, the Respondent Union moved that the complaint be dismissed in its entirety and urged various alternate motions for dismissal of certain allegations of the complaint. The undersigned denied these motions. At the conclusion of the hearing, the motion of the General Counsel that the pleadings be conformed to the proof in respect to minor variances such as names and dates was granted. At the same time, the motions of the Respondents that the complaint be dismissed were renewed and ruling thereon was reserved. Those motions are disposed of in accordance with the findings of fact and conclusions of law made below.

Upon the conclusion of the hearing, the undersigned advised the parties that they might argue before, and file briefs or proposed findings of fact and conclusions of law, or both, with the Trial Examiner. The Respondents waived oral argument but briefly stated their positions in argument on the

renewal of their motions to dismiss the complaint. The General Counsel engaged in oral argument. The Respondent Company, the Respondent Union, and the General Counsel each filed a brief with the undersigned.

Pursuant to application duly made and arrangements mutually agreeable to all parties, the testimony of Earl B. Scott was taken by deposition on September 25, 1950, and it is hereby incorporated into the record of the instant proceeding.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of the Respondent Company

Westinghouse Electric Corporation, a Pennsylvania corporation with its principal office at Pittsburgh, Pennsylvania, operates plants throughout the United States, including a plant at Sunnyvale, California. At its Sunnyvale plant, the Respondent Company manufactures electrical and steam equipment, including turbines, transformers, and switch gear. In 1948 and 1949, it purchased for its Sunnyvale plant sheet metal, wire, insulation material, castings, ball bearings, oil, and other materials and supplies valued annually in excess of \$1,000,000, of which approximately 50 per cent was shipped to its Sunnyvale plant from points outside the State of California. In 1948 and 1949, the Respondent Company's sales from its Sunnyvale plant exceeded \$8,000,000 annually, of which approximately 50 per cent was shipped from its Sunnyvale plant to points outside the State of California.

II. The labor organization involved

International Association of Machinists, Local No. 504, is a labor organization admitting employees of the Respondent Company to membership.

III. The alleged unfair labor practices

A. Sequence of events through September, 1949

1. Collective bargaining history; the elections

On March 1, 1947, the Respondent Company assumed ownership of its Sunnyvale plant, which theretofore had been owned and operated by Joshua Hendy Iron Works. For a number of years prior thereto, the latter had had collective bargaining contracts, with closed-shop provisions, with the Respondent Union or its predecessor. On May 14, 1947, the Respondents executed a collective bargaining contract for a term beginning May, 5, 1947, to, and including, March 31, 1949, and thereafter for successive annual periods unless otherwise terminated. This contract also contained closed-shop provisions.

In February, 1949, Independent Westinghouse Workers Union, herein called the IWWU, was formed and launched an organizational campaign among the Respondent Company's employees. Clyde Scheuerman was president of the IWWU and in March, 1949, upon charges of dual unionism was tried, fined, and expelled from membership in the Respondent Union. In May, 1949, he was informed that the International Association of Machinists had approved the action taken in respect to him by the Respondent Union.

Meanwhile, the contract between the Respondents expired on April 1, 1949. On June 13, 1949, the Board issued its Decision and Direction of Elections, directing that elections be conducted among three voting groups of the Respondent Company's employees.⁶ The employees in one voting group were to determine whether they desired to be represented for the purposes of collective bargaining by the Respondent Union or the IWWU. The Respondent Union won the election in the voting group in which it participated and was certified as the statutory representative of such employees on July 19, 1949. After the election, the IWWU was disbanded. Pursuant to a consent election agreement, the Regional Director, on August 25, 1949, conducted a union-shop authorization election among the employees in the bargaining unit for which the Respondent Union was the statutory representative. A majority of the eligible voters authorized the Respondent Union to negotiate a union-security agreement and a certificate of the results of the election was issued on September 7, 1949.

2. The alleged discrimination in September, 1949, in respect to King, Pachorik, Marovich, and Scheuerman

a. The testimony of Chloe Andersen

Andersen testified as follows with respect to a meeting held in the office of Mechanical Superin-

⁶Westinghouse Electric Corporation, 84 NLRB 213.

tendent John J. McAuliffe on September 9, 1949: Anderson, in 1949, was employed by the Respondent Company as a copy typist. When McAuliffe's secretary, Louella Walter, took a vacation from September 2 through September 16, 1949, Andersen assumed her position as secretary for McAuliffe, and during that period, occupied an "ante room office" adjacent to that of McAuliffe. On September 9, 1949, McAuliffe was ill and not at work. On that afternoon, a meeting was held in McAuliffe's office in his absence and was attended by a group of the Respondent Company's supervisors, including B. H. Goodenough, manager of industrial relations for the Respondent Company; Assistant Superintendent Herbert C. Buckingham; Tool Supervisor W. H. Harrison; Foreman Thomas P. Shields; and possibly "one or two more supervisors," as well as Franklin W. Gorham, assistant business agent for the Respondent Union.

According to Andersen, the door between her office and that of McAuliffe was left open and she overheard the ensuing discussion among the participants in the conference. Goodenough seemed to be in charge of the meeting and opened it by saying, "Mr. Gorham has come in to say a few words." Thereupon Gorham said, "Now that the contract is pretty well buttoned up, I have a list of names of men that I want you to get rid of * * * Floyd King, Johnnie Marovich, Clyde Scheuermann, and a man named Pachorik." In respect to King, Gorham said, "He was the worst union member he had ever come in contact with; he wasn't fit to belong to any

union” and furthermore remonstrated, “You not only did not discharge him, but you let him be transferred to the Maintenance Department, where he got a raise in pay.” At that point, about 5 minutes after the beginning of the meeting, Gorham left. The supervisors remained and discussed his requests.

Goodenough said, “I don’t know how you boys feel about this, but I know that Mr. Gorham is only worried about Mr. Gorham. That is, he has been a pretty good boy when it came to signing this contract and I think this is the least we can do for him.”

Foreman Shields stated, “I want to see Johnnie Marovich the first one off that list.” Whereupon one of the other supervisors reminded Shields that “Marovich had a lot of seniority.” Shields pointed out that Marovich had recently “spoiled a good percentage of material that cost several thousands of dollars and he knew he could get him on that, if nothing else.”

Harrison “wanted to know how they would get Floyd King. He had a lot of seniority in his department and he didn’t see how he could terminate him.” Goodenough countered, “Well, there must be something he can’t do.” Harrison replied, “That is just it, there isn’t anything he can’t do.”

The discussion turned to Pachorik, and Buckingham remarked that “Pachorik had about twenty-five years’ service with the company * * * I feel that any man who has been able to stay with the company for twenty-five years must have some good

qualities and if you don't want him, transfer him to my department. I could use him."

Buckingham then asked, "What are we going to do about Scheuerman?" When it was pointed out that Scheuermann was in Buckingham's department, Buckingham said, "Well, if one goes in my department they are all going. There won't be any seniority to quibble about." At that point, the meeting adjourned.

That evening Andersen related the occurrences of the meeting to Scheuermann and Leslie Ollis, who were the principal witnesses for the General Counsel in the presentation of Scheuermann's case. Andersen, Scheuermann, and Ollis were personal friends and their homes were relatively near each other in the same small community, Redwood Estates.

- b. Testimony of the Respondents' witnesses as to the conference in McAuliffe's office in September, 1949.

Industrial Relations Manager Goodenough, Assistant Superintendent Buckingham, Tool Supervisor Harrison, Foreman Shields, Foreman Sheldon Huffman, and Electrical Superintendent Kermit Clark, who were witnesses for the Respondent Company, and Business Agent Gorham and Chief Shop Steward Carl Schwartz, who were witnesses for the Respondent Union, testified that they attended a conference in McAuliffe's office on a day when McAuliffe was not at work and that only one such meeting in which they all participated was held.

Several testified that the meeting was held in September, 1949; others stated that it was in the fall or latter part of 1949. As noted above, Andersen fixed the day on which the meeting was held as September 9, 1949. That day is a State holiday, commemorating California's admission to the United States. Buckingham recalled that on September 9, 1949, he and a foreman left the Respondent Company's plant about 10:30 or 11 a.m. in order to witness a parade in nearby San Jose, California, and that they returned to the plant about 1 or 1:30 p.m. According to Buckingham, he never absented himself from the plant on those occasions when he was assuming the duties of Mechanical Superintendent McAuliffe. Inasmuch as McAuliffe was ill and not at work on the day the meeting in question was held, Buckingham reasoned that it could not have been held on September 9, 1949, the day on which he witnessed the parade during working hours.

Business Agent Gorham testified that on September 9, 1949, he spent most of the day in his office at San Jose, being unable to take his automobile from a parking lot because of a parade and other celebrations which blocked the streets near his office. He testified that he left the office only once in the afternoon of September 9, 1949, in order to discuss a grievance with the General Electric Company, and denied that he was at the Respondent Company's Sunnyvale plant on that date. According to Gorham, the meeting in question was held on September 6, 1949. Schwartz testified that the con-

ference occurred on the day he returned from vacation, September 6, 1949, the day after Labor Day.

The record establishes that the meeting in question was held during a period of production and employment curtailment on the part of the Respondent Company. In March, 1949, the number of hourly paid employees in the Respondent Company's employ reached a maximum of 1,956. By July, 1949, the number of employees had decreased to approximately 1,400. In December, 1949, there were 872 employees. The reduction in force was general in scope, affecting all departments of the plant.

A synthesis of the mutually corroborative and reconcilable testimony of the testimony of the eight witnesses for the Respondents named above, in respect to the September conference is as follows:

The conference was called by Buckingham to discuss a problem arising from lack of work in the welding department, supervised by Foreman Huffman. Due to the fact that parts had not arrived from a supplier, there was insufficient work for these welders, who at that time were on a work week of 32 hours rather than the customary 40 hours. Various suggested solutions to the problem were discussed: (1) Layoff of some of these welders and their comparative seniority; (2) further reduction in the number of hours of the work week; and (3) transfer of some of them to the electrical division under Superintendent Clark and Foreman Emil Ghiorso, who were also in attendance at the

meeting. Assistant Business Agent Gorham and Chief Shop Steward Schwartz⁷ were present during the first portion of the conference when the problem concerning welders was being discussed. Gorham suggested that a staggered work week be inaugurated; that is, the full complement of welders then in the employ of the mechanical division should be retained but should work alternate weeks, thereby permitting them to draw State unemployment insurance during the weeks they were not employed. Gorham's suggestion was rejected. According to Goodenough and Huffman, the ultimate decision, reached either at this meeting or shortly thereafter, was to retain the welders but to reduce their work week further until anticipated production work materialized.

At the conclusion of the discussion in regard to the welders, the representatives of the Respondent Union, as well as Clark, Ghiorso, and Huffman, left the meeting.⁸

Foreman Shields then brought up a problem then confronting him, namely, the further reduction in the number of machinists under his supervision. A seniority list showing the length of service of employees in the mechanical division by departments was studied. Shields stated that two em-

⁷Shop Steward Sohm may also have attended the conference.

⁸Unlike the other witnesses for the Respondents, Harrison's testimony indicated that Gorham did not leave the conference at this time.

ployees under his supervision, John Marovich and James Ashton, produced less from the viewpoint of quantity than did other employees still in his department and that in order to maintain efficient operation and production schedules in his department, he would include Ashton and Marovich in the next layoff of employees of the department and would retain employees with less seniority than Ashton and Marovich possessed. Inasmuch as the Respondent Company had been attempting to adhere to seniority in scheduling layoffs as much as possible, Industrial Relations Manager Goodenough cautioned, "I think you fellows should also bear in mind that when you go outside the seniority provisions, you must be certain that the employee is not capably performing his work, because in most of these cases, you can be assured that you will receive a grievance. You must be able to justify your decision." During the discussion, Tool Supervisor Harrison was asked whether he might have use for the services of Marovich and Ashton in maintenance work, which was under Harrison's supervision. Harrison replied that he believed neither of them to be capable of performing maintenance work.

Goodenough and Gorham specifically denied the utterance of statements or demands attributed to them by Andersen. Their denials were corroborated in varying degrees by the testimony of Shields, Huffman, Clark, Harrison, Buckingham, and Schwartz. These eight witnesses for the Respondents also denied that the names of Scheuermann and Pachorik were mentioned during the conference.

Shields, Huffman, King, Harrison, Clark, and Gorham testified that King's name was not mentioned in the conference, but Schwartz and Buckingham recalled that a brief reference was made to King in connection with transfers to the maintenance department. Buckingham specifically denied that he stated in the conference, as testified to by Andersen, "Well, if one goes in my department they are all going. There won't be any seniority to quibble about."

c. The release of Marovich

In 1941, Marovich entered the employ of the Joshua Hendy Iron Works, the Respondent Company's predecessor, and continued to work at the Sunnyvale plant when the Respondent Company assumed its operation. He had been a member of the International Association of Machinists, Lodge 68, the predecessor of the Respondent Union, and had served as chief shop steward of Lodge 68 until the Respondent Union assumed jurisdiction in 1945 over the employees at the Sunnyvale plant and thereafter Marovich was a member of the Respondent Union. At the time of the hearing he still retained membership in good standing in the Respondent Union.

In 1945, after the Respondent Union assumed jurisdiction of the Sunnyvale plant, the Respondent Union asked him to act as its chief shop steward, but he refused to do so and suggested that Schwartz assume that post. About the same time, Marovich discussed the transfer of Lodge 68 to the Re-

spondent Union with its business agent, Earl Scott, and Scott said, according to Marovich, "I wish you would cooperate more with us. You haven't cooperated a darned bit since you boys have come into the local." Marovich replied, "Scotty, I don't see how I could cooperate. I don't like the way the Grand Lodge dumped us without a voice or vote into your local."

In May or June, 1947, a rival labor organization attempted to organize the Sunnyvale plant and Marovich distributed its membership cards. At a meeting of the Respondent Union in 1948, Marovich expressed an opinion that the officers of the Respondent Union at that time had not been elected in full compliance with its bylaws. Marovich testified that during the 1949 organizational campaign of the IWWU, he read its handbills and in conversations with Chief Shop Steward Schwartz, Marovich frequently "kidded him along and told him that was a lot better than what we had in our department or something to that effect." To these sallies, Schwartz countered, "Oh, you are independent?" Marovich replied, "Well, not yet." However, he testified further that "I didn't go ahead and make an issue of it at all or arbitrate with him too much on that point." He admitted that nearly all employees in the plant discussed the organizational campaign of the IWWU. Respondent Union never expelled Marovich from membership or took official action against him for the above incidents and statements.

In September, 1949, Marovich worked as a ma-

chinent in the mechanical division under the supervision of Foreman Shields. On September 19, 1949, Shields told Marovich, according to the latter's credible testimony, "I have to let you go * * * Tomorrow will be your last day." Marovich then inquired, "On what ground am I being terminated? * * * Am I being terminated under the contract we have here for going down by seniority rights and if it is my turn, * * * I have no objection." Shields replied, "No, Johnnie, it isn't that. It is just the idea * * * You are just not cutting the buck * * * You are taking a little too much time on these smaller machines and your time on the big machines has been fairly good but on the smaller machines you haven't been making the time." Marovich said, "Well, that means that I haven't got the skill, Tommie." Shields replied, "No * * * you are just a little too slow."

On September 20, 1949, Marovich was "released" from the Respondent Company's employ and before leaving the plant, he had an interview with Employment Supervisor William Kelly.⁹ During

⁹In respect to Marovich's "release" from the Respondent Company's employ, Kelly gave the following explanation at the hearing for the three methods followed by the Respondent Company in terminating employment of employees, namely, lay-off, release, and discharge:

Marovich was not discharged. Marovich was released for failure to meet production requirements. * * * We have certain posted shop regulations for which a man may be discharged. A person who cannot or does not or will not meet production requirements is released. A person who has done a

the conversation, Kelly told Marovich that the reason for the termination of his employment "wasn't because he couldn't do the work" but "because he wouldn't stay on his machine. He wasn't producing the work."¹⁰

Having learned of the release of Marovich, Chief Shop Steward Schwartz discussed the matter with Marovich on September 20, 1949, and suggested that a grievance be filed by the Respondent Union in Marovich's behalf. Marovich concurred with Schwartz's suggestion and Schwartz promptly filed a grievance with Foreman Shields on September 20, 1949. Schwartz discussed the matter with Shields for about 30 minutes on September 20, 1949, but was unable to convince Shields that Marovich's termination of employment should be rescinded. Later

satisfactory job but the work runs out and it is necessary to dispense with his services is laid off. The first, a discharge for violation of Company regulations, would make it very difficult for that man to get employment again. A release would restrict his employment. * * * I would not re-employ a person who has been released back on the same job. It doesn't mean he couldn't work elsewhere if he had the qualifications. A person who was laid off would automatically go on an automatic seniority list for that job or anything similar to that. (Emphasis supplied.)

¹⁰The findings in this sentence are based upon the credible testimony of Kelly. Upon the entire record and from his observation of the witnesses, Marovich's version of the conversation is not credited to the extent that it was at variance with that of Kelly. On September 19 or 20, 1949, Ashton was also released from the Respondent Company's employ.

the same day, the second step of the grievance procedure was carried out by appealing the matter to the attention of Superintendent McAuliffe, who was unswayed by the arguments for revocation of Marovich's release.¹¹ On September 22, 1949, Business Agent Gorham processed the third and final step of the grievance procedure by discussing Marovich's grievance with Industrial Relations Manager Goodenough. The result of the discussion was that the Respondent Company refused to countermand Marovich's termination of employment. Before signing the grievance form, Gorham told Marovich of the discussion and Marovich told Gorham to drop the matter.¹²

Foreman Shields and Welsey Johns, leaderman for Marovich, testified that they had compared the amount of production achieved by Marovich with that done by his successor on the same machine on the second shift from May or June to September, 1949, and found that Marovich's production rate

¹¹The finding in this sentence is based upon the credible testimony of McAuliffe and documentary evidence. Schwartz could not recall whether he processed the grievance through the second step of the grievance procedure. Upon the entire record, the undersigned credits McAuliffe's testimony in this regard.

¹²The findings as to the processing of the grievance through the third step of the grievance procedure are based principally upon the credible testimony of Gorham. The Respondent Union unsuccessfully processed a grievance in regard to Ashton's termination of employment contemporaneously with the grievance of Marovich.

was low and did not meet the minimum requirements set by the Respondent Company's methods study department. Their complaint related only to the quantity of his production but not the quality of his work. They admitted that they never formally reprimanded Marovich for his low output or warned him that his employment might be terminated, although Johns testified that he told Marovich several times, "Come on, let's get off the dime." Kelly testified that he had had complaints that Marovich was frequently away from his machine during working hours and that Kelly personally had "gone out in the shop repeatedly * * * and told him if he doesn't stay on the machine he wasn't going to be there," both before and after the Respondent Company commenced the operation of the Sunnyvale plant. Aside from Pachorik's testimony that "offhand I would say that [Marovich] was doing a good job," their testimony in this regard was uncontraverted. The testimony of Shields, Johns, and Kelly is credited.

At the time of the hearing, Marovich was still a member in good standing of the Respondent Union. In April, 1950, Assistant Business Agent Gorham telephoned Marovich to inquire whether the latter wished employment. Marovich indicated that he did and Gorham referred him to a position with the San Jose Foundry. Marovich said that he would accept the job but upon reconsideration changed his mind and telephoned Gorham that he would decline the job. Records of the Respondent Union reveal that on June 7, and 8, 1950, the Respondent Union

attempted unsuccessfully to reach Marovich by telephone to refer him to job openings. In July, 1950, when Marovich came to the offices of the Respondent Union to pay his dues, Gorham inquired whether he desired employment and Marovich told him that he would be ready to take a position as machinist about September.

d. Testimony in respect to Pachorik

Pachorik entered the employ of the Respondent Company's predecessor in 1946 and continued in the Sunnyvale plant as a machinist after the Respondent Company assumed its operation.¹³

The only evidence in the record in respect to any possible animus which the Respondent Union might bear Pachorik, is the following undenied testimony of Pachorik: Prior to the representation election and during the campaign period, Pachorik told Chief Shop Steward Schwartz that Pachorik intended to vote for the IWWU in the election. The day after the election, Schwartz met Pachorik and said, "One of the 68." Pachorik replied, "Well, you fellows won the election. Why harp on it?" Schwartz countered, "Well, anyone that would vote for 68 is a Red." According to Pachorik, 68 votes were cast for the IWWU in the election and Schwartz was referring to that fact in the conversation. Schwartz was not questioned in regard to this conversation, but he denied that in discussions with Gorham in regard to the leaders of the IWWU,

¹³Prior to 1946, Pachorik had worked at a Philadelphia plant of the Respondent Company.

the names of Pachorik, or Marovich were mentioned.

In the fall of 1949, sometime after the release of Marovich from the Respondent Company's employ, Foreman Shields informed Pachorik that his name appeared upon a list of employees to be laid off and suggested that Pachorik talk with Buckingham about obtaining a job in the latter's division. Pachorik consulted with Buckingham later in the day and Buckingham promised that he would find a position for Pachorik if necessary.¹⁴

A few days later, Pachorik went to William H. Kelly, employment supervisor, to inquire about the matter and told him that Pachorik had been in-

¹⁴The findings in this paragraph are based principally upon the testimony of Pachorik. In large measure, the testimony of Foreman Shields was corroborative of that of Pachorik, except that Shields did not recall informing Pachorik that his name was on a tentative layoff list. Shields testified that Pachorik was an especially skilled employee whom the Respondent Company desired to retain in its employ and when work which Pachorik had been performing became slack in late 1949, Shields asked Buckingham if the latter might have a position in his division for Pachorik, so that the Respondent Company could retain Pachorik in its employ. Buckingham asked Shields to send Pachorik to talk with him and Shields relayed Buckingham's request to Pachorik. According to Buckingham, on several occasions, Pachorik sought to obtain a transfer to Buckingham's section but Buckingham did not promise to assent to a transfer. Upon the entire record, the undersigned credits the testimony of Pachorik and does not credit Shields or Buckingham to the extent that their testimony was at variance with that of Pachorik.

formed that his name was on a layoff list. Kelly informed Pachorik that when the list of prospective layoffs had been discussed by the Respondent Company's supervisors, it was decided that Pachorik should be retained in the Respondent Company's employ because of Pachorik's special abilities as a machinist but that Kelly would inquire further about the matter. Kelly then went to Industrial Relations Manager Goodenough and told him of his conversation with Pachorik. Goodenough confirmed Kelly's recollection of the decision of the Respondent Company to retain Pachorik in its employ and told him to inform Pachorik that he would not be laid off. McGilvray, who was with Goodenough at the time, affirmed the decision. Kelly reported the conversation to Pachorik.¹⁵

The record discloses that Pachorik was never laid off during the period of drastic reduction in force, that he was retained in the Respondent Company's

¹⁵The findings in this paragraph are based upon the testimony of Kelly, who impressed the undersigned as an especially reliable witness. Pachorik's version of his colloquy with Kelly varied in certain details from that of Kelly. The principal variance was that Pachorik testified that Kelly informed Pachorik after consulting with McGilvray that the latter said, "That boy will stay if he is the last man in the shop, and if necessary, if you have to change the whole damned contract." Kelly specifically denied making this statement attributed to him by Pachorik. Upon the entire record and his impression of the witnesses, the undersigned credits Kelly's version of his conversation with Pachorik and does not credit Pachorik to the extent that his testimony was at variance with that of Kelly.

employ despite that fact that he possessed less seniority than other employees in his department who were laid off, and that the reason for his retention was that he was an especially skilled machinist.

e. Testimony in respect to King

King worked for the Respondent Company's predecessor at the Sunnyvale plant from late 1941 until June, 1944, reentered its employ on April 25, 1946, and continued to work for the Respondent Company after it took over the Sunnyvale plant.

The record contains little evidence indicating animus on the part of the Respondent Union in regard to King. King was a member of the executive board of the Respondent Union for the year 1948 and testified that on five or six occasions in executive board meetings he voiced opposition to positions taken by Assistant Business Agent Gorham. King admitted, however, that he was sometimes in agreement with Gorham's policies. In May, 1948, a question in regard to the interpretation of the vacation provisions of the then current contract was brought in issue by King, who, believing himself entitled to a longer vacation than that approved by the Respondent Company, asked Chief Shop Steward Schwartz to file a grievance in King's behalf. Schwartz refused to do so. Later, King discussed the matter with Gorham, who could not agree to King's interpretation of the vacation provisions. At Gorham's request, Goodenough discussed the matter with King a few days later and affirmed the interpretation of Gorham to the contract. King

testified that he, Marovich, and others criticized the administration of the Respondent Union at meetings; the only specific instance that he recalled apparently was that described by Marovich and set forth above. King admitted that members frequently voiced criticism of the administration of the Respondent Union, its policies and procedures, both at meetings and at work.

Early in September, 1949, King was transferred from the mechanical section to the maintenance department. Within a week thereafter, Gorham told Goodenough, according to the latter's credible testimony, that "he didn't favor that move because Mr. King had been retained outside of seniority * * * and that this move put him into a department where his seniority might protect him; and that he felt that was unfair to the other employees with greater seniority." Goodenough suggested that before Gorham officially protested the transfer of King, Gorham should discuss the matter with the superintendent of the mechanical section. No grievance was ever filed by the Respondent Union in regard to King's transfer. Gorham testified that the only discussion in regard to King was "in connection with general layoffs, on the question of relative seniority, and things of that kind."

f. Conclusions as to credibility

Considering the record in its entirety, the undersigned is impelled to conclude that the testimony

of Andersen is not entitled to credence for the following reasons:

1. The circumstances whereby Andersen allegedly overheard the conversation between the Respondent Company's supervisors and the Respondent Union's representatives are, in the undersigned's opinion, implausible. That is, it seems highly unlikely that a conference held for the purpose of the Respondent Union's voicing its demands for the termination of the employment of four employees, who allegedly were critical of or opposed to it, at a time when no collective bargaining contract between the Respondents was in existence, would have been conducted in an office with a door open into the adjoining office of McAuliffe's secretary. Inasmuch as Andersen was not McAuliffe's regular secretary but was merely substituting in her stead in her absence, it is even more unlikely that a conference of such a nature would be held in a manner to enable a temporary secretary to overhear the remarks. On the other hand, the testimony of the witnesses for the Respondents with respect to the only meeting they all attended in McAuliffe's office in his absence during the latter half of 1949 is manifestly plausible. During the period the Respondents were negotiating for a new contract, certain provisions of the expired contract were still given effect, particularly seniority provisions,¹⁶ and

¹⁶The expired contract contained the following provisions in respect to seniority and reductions in force:

In laying off employees consideration will be

during the latter half of 1949, when the Respondent Company was retrenching its operations and personnel, the Respondents met frequently to discuss pending layoffs before they were actually effectuated. The purpose of the conference according to the Respondents' witnesses, arose from the prospect of a necessity for further reduction in the number of welders. The presence of the supervisors from various departments of the Respondent Company's plant in attendance at the meeting was necessary to discuss the problem and the various alternative solutions thereto. Upon the conclusion of the discussion in regard to the welders, the Respondent Union's representatives and certain supervisors left the meeting. Among those who remained, the discussion turned to a problem raised by Foreman Shields in respect to an additional reduction in force in his department. The version given by the Respondents' witnesses of the conference in question is manifestly plausible and logical.

given to length of service as well as to qualifications for available work. In calling back employees on leave who were laid off for lack of work, the Employer shall give consideration to their qualifications for open jobs and their length of employment with the Employer. The Employer shall agree to cooperate in every way possible to retain the regular working force. When business conditions necessitate retrenchment in operations every effort will be made to distribute work in lieu of a reduction of the working force. When a layoff is necessary because of lack of work, twenty-four (24) hours' notice shall be given the employee of such layoff whenever practicable.

2. Andersen set the date of the conference as occurring on September 9, 1949, a State holiday. The testimony of Buckingham and Gorham with respect to their activities that day is most persuasive and indicates that the conference could not have been held on that day. Gorham testified that it occurred on September 6, the day after Labor Day. Schwartz recalled that the meeting was held on the day he returned from his vacation, September 6. The testimony of Buckingham, Gorham, and Schwartz in this regard is convincing and is credited.

3. In her testimony, Andersen attributed to Gorham a statement "now that the contract is pretty well buttoned up," indicating that agreement had been reached by the Respondents on most of the important provisions of the contract prior to the conference in question. Later she testified that in the same meeting Goodenough said that Gorham "has been a pretty good boy when it came to signing this contract." Insofar as the statement attributed to Goodenough signified that the contract between the Respondents had been signed, Andersen's testimony has no basis in fact, for the Respondents at this time were in the process of negotiating the contract and did not execute it until October 10, 1949. Furthermore, the credible testimony of Goodenough and Gorham establishes that on September 6, 1949, the contract was by no means "buttoned up" for the parties had not yet reached

agreement on several important provisions.¹⁷ Thus, the weight of the credible evidence refutes the testimony of Andersen in regard to the status of the contract then in the process of negotiation.

4. According to Andersen, Assistant Business Agent Gorham requested the Respondent Company "to get rid of" Marovich. Yet, the uncontroverted credible testimony establishes that immediately after Marovich's employment was terminated by the Respondent Company, Shop Steward Schwartz suggested that a grievance be filed by the Respondent Union in Marovich's behalf and the grievance was filed and processed by the Respondent Union. Furthermore, the Respondent Union thereafter referred Marovich to employment and attempted to reach him on another occasion to refer him to employment. Still later, Gorham inquired when Marovich would be available for employment. If Andersen's testimony is credited and it is found that the Respondent Union demanded that Marovich be re-

¹⁷The undersigned has considered the arguments of the General Counsel in regard to this issue but cannot agree that notes of the Respondent Company covering a bargaining conference held on September 19, 1949, corroborates Andersen's testimony that agreement had been reached on several important items. In the undersigned's opinion, the documents in question support the testimony of Goodenough and Gorham that agreement had not been reached. In addition, it is noteworthy that the terms and provisions of the new contract were substantially different from those of the expired agreement and negotiations for the new contract continued regularly for approximately 2 months.

leased from the Respondent Company's employ and then immediately thereafter processed a grievance protesting such release and still later on several occasions sought to obtain employment for him, the Respondent Union was following an incredibly duplicitous course of action in respect to Marovich. The undersigned cannot reconcile Andersen's testimony in regard to Marovich with the Respondent Union's subsequent efforts in Marovich's behalf and cannot believe that the latter efforts were a Machiavellian subterfuge to conceal its illegal request for the termination of Marovich's employment. The undersigned concludes that the Respondent Union's efforts in the cause of Marovich subsequent to his release effectively belie the testimony of Andersen in respect to the Respondent Union's demand for the termination of his employment.¹⁸

¹⁸The General Counsel contends that certain aspects of the testimony in regard to the release of Marovich lends credence to Andersen's testimony. Admittedly, Marovich's immediate supervisors gave him no timely warning that his employment might be terminated due to the lack of quantity of his production and there is some conflict among the testimony of the Respondent Company's witnesses as to whether he was laid off because of lack of work or released because of inability to meet production standards. Although these matters may give rise to some doubt as to the reasonableness of the action taken by the Respondent Company, the undersigned cannot agree with the General Counsel's contentions that they buttress Andersen's testimony. The conflict in the testimony as to Marovich's discharge is more apparent than real; actually, the testimony of the Respondent Com-

5. In addition, the record contains little probative evidence to sustain the complaint's allegation that the motivation for the Respondent Union's alleged illegal requests for the discharge of King, Pachorik, or Marovich arose from their expression of preference for the IWWU or criticism of the Respondent Union. The lack of evidence of such motivation gives reason to suspect the credibility of Andersen's testimony that the Respondent Union requested their discharge. None of these three was active in the IWWU. Although King and Marovich

pany's witnesses is mutually reconcilable. As stated by McAuliffe in regard to the reasons for the release of Marovich and Ashton, "They were primarily terminated for their inability to meet production requirements. It was during a period, however, when work was very slow." It will be recalled also that, as stated above, Goodenough warned Shields, when the latter proposed to include Marovich and Ashton in the next reduction in force, "I think you fellows should also bear in mind that when you go outside the seniority provisions, you must be certain that the employee is not capably performing his work, because in most of these cases, you can be assured that you will receive a grievance. You must be able to justify your decision." In view of these factors, as well as the obvious fact that not all witnesses were so precise in their testimony as Employment Supervisor Kelly in following the close distinctions between "layoff," "release," and "discharge," as these terms were administered by the personnel department, the undersigned is of the opinion that these aspects of the testimony of the Respondent Company's witnesses afford no support to Andersen's testimony, which, in any event, is effectively controverted by the efforts of the Respondent Union on Marovich's behalf subsequent to his release.

testified that they had voiced criticisms of the administration of the Respondent Union in meetings and on occasion disagreed with its officers, the record shows that they were not alone in expressing such criticisms, which, at most, appear to be customary conduct resulting from the application of democratic principles in any organization. King's disagreement with Gorham as to the interpretation of the vacation clause in the contract in effect during 1948 is insufficient, in the undersigned's opinion, to support an inference that such disagreement gave the Respondent Union reason to desire, a year later, the termination of King's employment with the Respondent Company. Although Marovich jested with Schwartz in regard to the IWWU, Pachorik told Schwartz that the former intended to vote for the IWWU in the election, and after the election Schwartz accused Pachorik of being a supporter of the IWWU, it is significant that in none of these conversations did Schwartz express any threat of retaliation by the Respondent Union. Furthermore, none of the three was expelled from membership or subjected to any official criticism or sanction by the Respondent Union for their alleged criticism of it or preference for the IWWU. Indeed, as pointed out above, the Respondent Union rushed to the aid of Marovich upon his release from the Respondent Company's employ and processed a grievance in his behalf. In addition, it later referred him to job openings. The undersigned concludes that the complaint's allegations in respect to the Respondent

Union's motivation for its alleged attempt to cause the Respondent Company to discharge King, Pachorik, and Marovich has not been sustained by a preponderance of the credible evidence and that this factor negates the credibility of Andersen's testimony in regard to the demands of the Respondent Union at the conference on September 6, 1949.

6. Another consideration is the fact, previously noted, that in view of her friendship with Scheuermann and Ollis, and the fact that the latter two had shortly before the hearing assisted in the building of a car port for Andersen, it cannot be said that Andersen was a completely disinterested witness. In addition, although Andersen testified that she related to Scheuermann and Ollis the occurrences at the conference in question the same evening it occurred and thereafter discussed it with them, it is indeed curious that Andersen's knowledge of the conference was not brought to the attention of the General Counsel until the day on which she was called as a witness, despite the fact that an investigation by a field examiner of the Board had been conducted in respect to the original charge relating to the termination of Scheuermann's employment.¹⁹ This circumstance, considered in conjunction with the fact that in her usual work as a copy typist she assisted McAuliffe's regular secretary in the typing of termination papers, layoff

¹⁹This observation is by no means intended to cast aspersion on the General Counsel or to infer that he was a party to any fabrication of testimony or collusive action.

lists, and seniority lists during the period the Respondent Company was curtailing production and personnel, might serve as the basis for an inference that with the use of the knowledge gained in her work, her account of the conference in question was a fictitious elaboration on an actual conference held on September 6, 1949. However, for the purpose of this Report, it is unnecessary to determine whether her account was actually fictitious or merely inaccurate. For the foregoing reasons and upon the entire record, the undersigned concludes that Andersen's testimony is not entitled to credence.²⁰ The testimony of the Respondents' witnesses, as previously summarized, is credited.²¹

²⁰In reaching this conclusion as to Andersen's credibility, the undersigned has considered the facts in relation to Scheuermann's discharge, as hereinafter set forth. Conversely, in weighing Scheuermann's testimony, the undersigned has considered the friendship among Scheuermann, Ollis, and Andersen, as well as the circumstances set forth in this paragraph of the text.

²¹In reaching these conclusions as to the credibility of the witnesses, the undersigned has carefully considered the testimony of all witnesses and noted that there is some conflict in the testimony of the Respondents' witnesses as to the conference in question and as to other events. In the interest of brevity, a detailed summary of the testimony of each of the Respondents' witnesses has not been set forth. The undersigned is unable to agree with the General Counsel's contentions that the conflicts in the testimony of the Respondents' witnesses negate their credibility or buttress the testimony of Andersen. Their testimony on the chief issues

g. Conclusions as to the complaint's allegations of unfair labor practices on the part of the Respondent Union in September, 1949.

Having found that Andersen's testimony is not entitled to credence, the undersigned concludes and finds that in September, 1949, the Respondent Union did not attempt to cause the Respondent Company to discharge King, Pachorik, or Scheuermann and did not cause the Respondent Company to discharge Marovich because they had expressed a preference for the IWWU or criticized the Respondent Union and that accordingly the Respondent Union did not engage, in September, 1949, in violations of Section 8 (b) (1) (A) or 8 (b) (2) of the Act, as alleged in the complaint.

h. Conclusions as to the complaint's allegations of unfair labor practices on the part of the Respondent Company in regard to Marovich.

Having found that the Respondent Union did not request the Respondent Company to terminate the employment of Marovich and did not engage in any unfair labor practice with respect to Marovich, the

raised by the conference is mutually reconcilable and in the undersigned's opinion the conflicts in their testimony are relatively minor and are of the type that is to be expected when some eight witnesses relate their independent recollection of the occurrences at a conference and other events occurring more than a year prior to the time they gave their testimony. Indeed, in the opinion of the undersigned, such variance among their testimony lends substantially more credence to their version of the conference and other events than would their complete agreement on every detail.

undersigned concludes that the evidence does not sustain the complaint's allegations that "on or about September 20, 1949, [the Respondent Company] discharged John Marovich pursuant to the request of the Union" in violation of Section 8 (a) (1) and (3) of the Act.

B. The discharge of Scheuermann

1. Scheuermann's employment history; his expulsion from membership in the Respondent Union.

Scheuermann entered the employ of the Respondent Company's predecessor in June, 1941, and continued to work at the Sunnyvale plant after the Respondent Company assumed its operation. In 1941, he joined the Respondent Union's predecessor and was a member of the Respondent Union after it assumed jurisdiction in the Sunnyvale plant.

As mentioned above, shortly before the expiration of the Respondents' closed-shop contract on April 1, 1949, Scheuermann was one of the organizers of the IWWU and became its president, and was active in its organizational campaign.

On March 4, 1949, the Respondent Union notified Scheuermann that it had been charged that Scheuermann had violated the following provision of its constitution:

Any member or members of any local lodge who attempt to inaugurate or encourage secession from the Grand Lodge or any local lodge, or who advocate, encourage, or attempt to inaugurate any dual labor movement, or who violate the provisions of the Constitution of the

Grand Lodge, or the constitution for local lodges, shall, upon conviction thereof, be deemed guilty of conduct unbecoming a member and subject to fine or expulsion, or both.

On the same date, the Respondent Union notified Scheuermann that its trial committee would consider the charges against Scheuermann on March 8, 1949, and requested that he be present. At a meeting of the membership of the Respondent Union, apparently held about March 16, 1949, a report of the trial committee was submitted and the membership by secret ballot voted to expel Scheuermann from membership and fine him \$500. By letter dated March 22, 1949, the Respondent Union notified Scheuermann of the action taken by it in this regard.

On March 25, 1949, Scheuermann's attorney sent the Respondent Company the following letter, addressed to Goodenough's attention:

This is to advise you that on or about March 23, 1949, three of your employees, Clyde Scheuermann, Thomas H. Mullen and Les Ollis were notified by Local No. 504 International Association of Machinists that they have been found guilty of "dual unionism" on account of their activities in the formation of the International Westinghouse Workers Union, a labor organization.

We have reason to anticipate that demand may be presented to you for discharge or other

disciplinary action against these employees, either under the closed shop contract of the union or on some other pretext.

You are, of course, well aware of the National Labor Relations Board's rule, since confirmed by the courts, that activity in behalf of a rival union is privileged when it occurs at a time which is appropriate for the determination by the Board of the question of representation. This doctrine is popularly referred to as the Rutland Court doctrine. Under the circumstances, we are confident that you are fully aware that the discharge of the aforementioned employees, either now or at some future time, because of their union activities would constitute an unfair labor practice.

This letter, which is supplementary to previous notifications along the same line, is merely for the purpose of dispelling any possible question which may have occurred to you concerning the rights and status of the employees concerned.

On April 1, 1949, the Respondents' collective bargaining, agreement, containing closed-shop provisions, terminated.

On May 12, 1949, the Respondent Union sent Scheuermann the following letter:

Please be advised that we have been informed by General Secretary Treasurer Eric Peterson that the \$500.00 fine imposed against you by Lodge 504 has been approved by the Executive

Council and that the Grand Lodge records have been indicated to show that you have been fined the sum of \$500.00 and expelled from membership.

2. Attempts by Ollis to pay dues in spring and summer, 1949; Scheuermann's payment and remission of dues.

Ollis testified that in March, 1949, after his expulsion from membership in the Respondent Union but before the termination of the Respondent's contract on April 1, 1949, he offered to pay to Steward Elmer Smiley 2 months' dues in the Respondent Union thru March 31, 1949, the expiration date of the contract. According to Ollis, the following colloquy ensued:

* * * he told me I would be a damned fool to pay them because I had been expelled. I told him, regardless, that they had the contract, then, I wanted to pay dues as long as they had the contract, so he gave me a receipt for the money and said I was still being foolish, but he took them. That was the last time he took dues from me.

Ollis further testified that on three or four other occasions in the spring and summer of 1949, he offered to pay dues in the Respondent Union to Smiley but Smiley refused to accept them. According to Ollis, on one of these occasions he offered to pay initiation fees.

Smiley, on the other hand, insisted that on only

one occasion did Ollis offer to pay dues. This incident occurred about a month after Ollis was expelled from membership in the Respondent Union and fined. When Ollis offered the dues, Smiley, according to his testimony, told Ollis, "There is no use me taking any of your dues. They will send it back." Smiley testified, in addition, that the reason he refused Ollis' offer of dues was Smiley's belief that "the bylaws of our Union says that no member don't have to pay dues—if you are not a member you don't have to pay dues, so why should I collect dues if they are not a member?" Smiley denied that Ollis at any other time offered to pay or talked about paying dues.

Ollis did not impress the undersigned as a reliable witness. As the record shows, he was belligerent and evasive (particularly as to the tender of dues in the spring and summer following the March incident), and, in the opinion of the undersigned, purposely slanted his testimony in an effort to bolster Scheuermann's case. As between Ollis and Smiley, the latter impressed the undersigned as the more credible witness. In view of these considerations, as well as the fact found below that Smiley refused an offer of dues by Scheuermann in March, 1949, the undersigned does not credit Ollis' testimony as to his payment of dues in March, 1949, or his offer of dues and initiation fees on three or four occasions later in the spring and summer of 1949.

Scheuermann testified that in late March he offered to pay to Steward Smiley 1 month's dues but that Smiley refused to accept them, saying, "I

can't take dues from you. I have been told not to." Smiley was not questioned specifically with regard to this incident. However, Gorham testified that he never instructed any shop steward not to accept dues from Scheuermann. In view of the fact that records of the Respondent Union show that Scheuermann customarily paid his dues to Smiley, as well as Smiley's credited testimony set forth above in relation to the incident with Ollis, the undersigned finds that in March, 1949, Scheuermann offered to pay dues to Smiley but Smiley refused to accept them.

A little later, Scheuermann offered to pay the dues to Steward Louis Nunez, who accepted them and remitted them to the Union. It appears from a letter, set forth below, that thereafter Scheuermann submitted to the Respondent Union's office two additional payments for monthly dues. Records of the Respondent Union show that in March, 1949, Scheuermann paid his dues to Nunez for the month of January and in May he paid his dues, through the Respondent Union's office, for the month of February.

On June 3, 1949, the Respondent Union wrote Scheuermann the following letter and returned his last three payments of dues:

Enclosed you will find your money order for \$2.00 which was recently sent to Local 504. Also a money order for \$4.00, \$2.00 of which was sent in the last of March and \$2.00 the first of May.

As you know, in accordance with the Constitution, the members of Lodge 504 voted to expel you on March 16, 1949. The General Secretary Treasurer of the International Association of Machinists advised Lodge 504 in a letter dated April 28, 1949, that the Executive Council of the International Association of Machinists had concurred with the action of Lodge 504 in expelling you and fining you the sum of \$500.00 for violation of the Constitution of the International Association of Machinists. You are, therefore, not a member of the International Association of Machinists and we cannot accept dues from you.

3. The elections; execution of
the Respondents' contract

Pursuant to the Board's Decision and Direction of Elections, elections in three voting groups were conducted among the Respondent Company's employees on July 7, 1949, the IWWU being on the ballot in each of the voting groups. The Respondent Union won the election in its voting group and was certified by the Board on July 19, 1949. Within a short time after the election, the IWWU disbanded. In August, 1949, the Respondents commenced negotiations for a new collective bargaining contract. On August 25, 1949, a union-shop authorization election was conducted under the direction of the Regional Director among the employees in the bargaining unit for which the Respondent Union was the statutory representative. A certification of the results of

the election showing that a majority of the eligible voters had voted to authorize a union-security agreement was issued on September 7, 1949. Negotiations for a contract continued between the Respondents, culminating in agreement among the negotiators as to the terms thereof in late September, 1949, subject to ratification by the membership of the Respondent Union. On October 9, 1949, a Sunday, a special membership meeting, widely publicized by notices to members and notices posted on bulletin boards in the plant, was held to consider the terms of the proposed contract. The membership voted to ratify the contract and on October 10, 1949, the Respondents formally executed it.

The agreement contained the following provision in respect to union security:

All employees in the bargaining unit described in Section I shall, on and after the thirtieth day following the beginning of their employment, or October 10, 1949, whichever is the later, become and remain members of the Union, as a condition of their employment, during the life of this Agreement, and the Union shall notify the Company promptly in writing of the failure of any such employee to become or remain a member of the Union; provided, however, that the Union shall not request the Company to discriminate against any employee for non-membership in the Union if such membership is not available to the employee on the same terms and conditions generally applicable to other members, or if membership is denied

or terminated for reasons other than the failure of the employee to tender the periodic dues or initiation fees uniformly required by the Union as a condition of acquiring or maintaining membership.

Although copies of the contract were not posted, copies were given immediately to all supervisors of the Respondent Company and to all stewards of the Respondent Union.

Scheuermann, as well as Ollis, denied that they were aware of the union-shop provisions of the contract. Upon the entire record, the undersigned is unable to credit their testimony in this regard. Admittedly, Scheuermann was aware of the contract negotiations between the Respondents, of the conduct of the union-shop authorization election, and of the certification of the Respondent Union as a result thereof. Indeed, he testified that although he did not participate in the union-shop authorization election, he would have voted for a union shop, realizing that if provisions therefor were included in a contract, he would be required to be a member of the Respondent Union. He also testified that throughout the 8 years he was employed at the Sunnyvale plant, the Respondent Union or its predecessor held closed-shop contracts until the expiration of the last contract on April 1, 1949.

About a week after the union-shop authorization election, Leaderman Emil Tonascia asked Scheuermann, "Now that the * * * shop has won the union election, what effect will that have upon you?"

Scheuermann replied, according to Tonascia's credible testimony, "None whatever. The Taft-Hartley law protects me."²²

The record also discloses that the special meeting of the Respondent Union held on October 9, 1949, to ratify the proposed contract was widely publicized by posted notices at the plant and was discussed at work by employees. Scheuermann admitted that he knew that the special meeting of the Respondent Union was being held on October 9 and that he was aware of the purpose of the meeting. In addition, after the execution of the contract and about 2 weeks prior to Scheuermann's discharge, Shop Steward Nunez and Scheuermann discussed various terms of the contract, including its seniority, job classification, dues checkoff, and union-security provisions.²³ In view of these considerations, as well as the fact that inherent in Scheuermann's

²²Scheuermann did not specifically deny the testimony of Tonascia, although Scheuermann denied generally that he had any conversations with Tonascia or other employees in regard to the union-security provisions of the contract. Upon the entire record and his observation of the witnesses, the undersigned credits Tonascia's testimony and finds Scheuermann's general denial unentitled to credence.

²³This finding is based upon the credible testimony of Nunez. Scheuermann did not specifically deny the testimony of Nunez. Scheuermann denied generally that he talked with any employees in regard to the union-security provisions of the contract. For the reasons heretofore stated, Scheuermann's general denial is not credited.

and Ollis' testimony in respect to an attempt by Ollis to pay dues to Steward Smiley in October, 1949, discussed below, is the knowledge on their part of the union-security provisions of the contract, the undersigned does not credit their denials that they had no knowledge of the union-security provisions but finds upon the entire record that they were aware of such provisions.

4. Allis' attempt to pay dues in October, 1949

Ollis testified that "in the last week or so" before his employment with the Respondent Company was terminated on October 17, 1949, employees in conversations frequently referred to him as a "free rider," and that on one occasion in a discussion with other employees in the locker room between October 10 and 17, 1949, when they called him a "free rider" in the presence of Scheuermann, Steward Smiley, and employees Henry Groth and Malcolm Nelson, the following occurred:

I offered to pay dues to Smiley at that time and I offered, I believe I phrased it that we were willing to pay dues at any time, or possibly I said I am willing to pay dues, but I recall very definitely Smiley saying, as he had said before, "You know, we don't want any dues from you guys." * * *

Scheuermann's version of the incident in the locker room was as follows:

There was an incident of kidding about "free riders." It perturbed Ollis and he said, "How about it, Smiley? How about taking some dues

now?" Smiley said, You know I can't take dues from you guys. There was some more bantering and that was the end of it.

Nelson corroborated the testimony of Ollis and Scheuermann in that he recalled the incident having occurred when Ollis offered to pay dues but Smiley refused to accept them; however, he could not recall the conversation of the participants.

Smiley specifically denied that Ollis ever offered to pay dues in the locker room, and Groth testified that he could remember no such incident, although the latter recalled that Scheuermann and Ollis were jestingly referred to as "free riders."

Nelson and Groth were more nearly disinterested witnesses than the others testifying to this incident. From his observation of the witnesses, the undersigned finds, upon the testimony of Nelson, Scheuermann, and Ollis that between October 10 and 17, 1949, in a bantering conversation in the locker room and after being called a "free rider," Ollis offered in Scheuermann's presence, to pay dues to Smiley, but Smiley refused to accept them. Smiley's denial is not credited.

In connection with collection of dues, it might be noted that at the time in question stewards, as a convenience to members, took dues when offered and remitted them to the Respondent Union's office. It appears that applications for membership and payments of initiation fees were customarily handled by the Respondent Union's office and not by the stewards.

5. The discharge of Scheuermann

On November 11, 1949, Gorham submitted the following letter to Goodenough at the beginning of a conference on a grievance:

We are requesting Westinghouse Electric Corporation, Sunnyvale plant, to terminate the employment of Louis G. Gennai, Cleveland A. Norris and Clyde W. Scheuermann for failure to comply with Section 2 of the Agreement between Westinghouse Electric Corporation, Sunnyvale plant, and District Lodge No. 93, International Association of Machinists.²⁴

Goodenough asked Gorham whether the individuals named in the letter "had been given the same opportunity to join the union as all other individuals under the jurisdiction of the I.A.M.," whether the request for the termination of employment of the three employees was in compliance with the union-security provisions of the Respondents' contract, and whether Gorham believed that the request for the terminations of employment was in compliance with the Act. Gorham replied in the affirmative to each of these questions. Goodenough then requested that Gorham submit a statement in writing that the three employees whose discharge was requested had been given the same opportunity as

²⁴The Respondent Union, later on November 11, 1949, deleted Gennai's name from the letter when it was discovered that he had made arrangements to pay his initiation fees to a steward but had been unable to do so because of the steward's illness.

other employees to join the Respondent Union.²⁵

When Scheuermann reported to work on the second shift on the afternoon of November 11, 1949, he was sent to Superintendent McAuliffe. The latter read him the Respondent Union's request for his discharge, set forth above, and then gave it to Scheuermann to read. McAuliffe read the union-security provisions of the contract to Scheuermann and gave him the contract to read. Scheuermann protested, "Yes, but I don't think this applies to me * * * because I feel mine is a special case." In addition, Scheuermann stated that he believed himself unable to comply with the union-security provisions of the contract because "You know of the election and the fact that I was fined and expelled." According to Scheuermann, McAuliffe stated that he had discussed the matter with Goodenough and "was of the opinion that it just wasn't quite right." Nevertheless, Goodenough assured McAuliffe that he had asked Gorham "the three necessary questions and as far as he was concerned, why, they were going to abide by the agreement." McAuliffe then

²⁵The findings in this paragraph are based principally upon the credible testimony of Goodenough. In compliance with Goodenough's request, Gorham submitted the following letter dated November 15, 1949:

In answer to your question regarding my letter to you of November 11, 1949, please be advised that all of those listed in this letter for termination were given the same opportunity to become members of our organization as anyone else working in your plant at Sunnyvale.

said, "I don't think they can make it stick, do you?" Scheuermann concurred, and asked "Well, what do you expect me to do?" McAuliffe replied, "Well, they have asked me to terminate you and we are going to go through with it," and gave Scheuermann his termination papers.²⁶

On Monday, November 14, 1949, Scheuermann went to the Board's Regional Office in San Francisco and consulted a field examiner. Later that day, he stopped at the Respondent Union's office in San Jose and asked a clerk for an application for a membership card, which was supplied him. When he had filled it out and submitted it to the clerk, the latter examined some files and then went into Business Agent Earl Scott's office. The clerk returned, discarded Scheuermann's application, and told him that Scott wished to see him.

According to Scheuermann, he had the following conversation with Scott:

I told him I was out to try to * * * see what we could do about my being laid off at Westinghouse, and he said * * * Yes, "Clyde, I think we can do something. You pay your back dues

²⁶The findings in this paragraph of the text are based upon the testimony of Scheuermann. McAuliffe's version of the conversation varied substantially from that of Scheuermann and McAuliffe specifically denied most of the remarks attributed to him by Scheuermann and also denied that Scheuermann mentioned that he had been fined and expelled from the Respondent Union. The probabilities of the situation favor Scheuermann's version of the colloquy. Although the matter is not free from doubt, Scheuermann's version is credited.

and your new initiation fee and the \$500 fine—” he added that, and I kind of smiled at that, and I said, “Oh, yeah?” I didn’t even express it beyond that point and he said, “Well, I will tell you, Clyde, I don’t know anything about the case. I haven’t been following it. Frank [Gorham] has been handling that.” And he said, “I will make an appointment with him,” and I said, “Well, all right.” And I said, “Whatever time you say will be all right.” And I said, “Whatever time you say will be all right,” so he made it for ten o’clock the next morning.²⁷

Later in the afternoon of November 14, 1949, Scheuermann went to the Respondent Company’s plant and consulted Goodenough. He informed Goodenough of his visit to the Board’s office, of his

²⁷Pursuant to arrangement made during the course of the hearing, Scott’s testimony was taken by deposition on September 25, 1950. Therein, Scott denied that he told Scheuermann that the latter’s problem might be solved if he paid his back dues, reinstatement fee, and the \$500 fine. According to Scott, he told Scheuermann that the latter “would have to see Mr. Gorham. Mr. Gorham had been assigned to take care of Lodge 504 and I never injected myself into those matters on reinstatements or initiations, things like that. I never handle that,” and that an appointment could be made with Gorham. Although the matter is not free from doubt, the undersigned believes that on the record, Scheuermann’s version of the colloquy is more accurate than Scott’s inasmuch as the latter’s testimony on cross-examination as to other incidents regarding Scheuermann appears to be somewhat vague, if not evasive. Accordingly, Scheuermann’s testimony, set forth in the text, is credited.

conversation with Scott, and of his appointment with Gorham the following day. Scheuermann asked Goodenough whether "there wasn't something that could be readily fixed up between us rather than to have it go this far." Goodenough replied that in his opinion the Respondent Company had complied with the union-security provision of its contract with the Respondent Union and "didn't see that any change could be made." Scheuermann disclaimed any knowledge of the union-security provisions of the contract and explained his expulsion from membership in the Respondent Union to Goodenough. The latter suggested that Scheuermann inform him of the outcome of his appointment with Gorham the following day.²⁸

On November 15, 1949, Scheuermann kept his appointment with Gorham and asked to "make application to abide by the union shop." Gorham replied that he could not take Scheuermann's application inasmuch as he was unemployed. In this regard, Gorham testified that in periods when employment is curtailed and no jobs are available, the policy of the Respondent Union forbade him from taking "applications from people who are not employed."²⁹

Shortly thereafter on November 15, 1949, Scheuermann reported the outcome of his interview with

²⁸The findings in this paragraph are based upon the mutually reconcilable testimony of Goodenough and Scheuermann.

²⁹The findings in this paragraph are based upon the mutually reconcilable testimony of Scheuermann and Gorham.

Gorham to Goodenough. Scheuermann inquired whether there was any criticism of his work performance and Goodenough replied that there was none. Upon his request, Scheuermann was given a copy of the Respondents' contract.

6. Conclusions as to the termination of Scheuermann's employment

To recapitulate the facts as to Scheuermann, it has been found that he was a member in good standing of the Respondent Union for a number of years. In early 1949, he became one of the organizers of the IWWU and its first president but continued to maintain his membership in the Respondent Union. On March 22, 1949, the Respondent Union notified him that on March 16, 1949, he had been expelled from membership and fined \$500 for dual unionism. On March 25, 1949, Scheuermann's attorney advised the Respondent Company by letter of the fact that Scheuermann and two other employees had "been found guilty [by the Respondent Union] of 'dual unionism' on account of their activities in the formation" of the IWWU and warned the Respondent Company that "the discharge of the aforementioned employees, either now or at some future time, because of their union activities would constitute an unfair labor practice."

On April 1, 1949, the Respondents' closed-shop contract expired. On May 12, 1949, the Respondent Union informed Scheuermann that its Executive Council had approved the action taken by the Respondent Union in regard to Scheuermann. In

March and May, after his expulsion from membership, Scheuermann submitted to the Respondent Union his dues for the months of January and February and, apparently in late May or early June, mailed it his dues for the month of March. On June 3, 1949, the Respondent Union returned these three payments of dues, stating, "You are * * * not a member of the International Association of Machinists and we cannot accept dues from you."

From April 1, 1949, until October 10, 1949, there was no collective bargaining contract between the Respondents, and during that period employees were free to become and/or remain members of the Respondent Union or to refrain from becoming and/or remaining members. On October 10, 1949, the Respondents executed a valid contract requiring as a condition of employment that employees then in the Respondent Company's employ should become and remain members of the Respondent Union "on and after the thirtieth day following" the date of the contract's execution. It has been found that Scheuermann had knowledge of the contract and its union-security provisions. On an occasion between October 10 and 17, 1949, he was present when Ollis expressed to Steward Smiley a willingness to pay dues but Smiley refused to accept dues from Ollis.

On November 11, 1949, the 32nd day after the execution of the contract, the Respondent Union requested that the Respondent Company discharge Scheuermann for failure to comply with their contract's union-security provisions. On that date, the

Respondent Company acceded to the Respondent Union's request and discharged Scheuermann.

The issues arising from Scheuermann's discharge, as framed by the pleadings and the contentions of the parties, are based upon those provisions of Section 8 (a) (3) and 8 (b) (2) of the Act banning discrimination against an employee subject to a union-shop contract if his "membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."³⁰

The first question posed by the facts of the instant case is whether an employee who was expelled from membership in a labor organization on charges of dual unionism at a time when that organization held a closed-shop contract with the employer may thereafter (8 months later) be discharged for failure to comply with the union-security provisions of a succeeding contract between the employer and the labor organization. A strict construction of the words of

³⁰The complaint does not allege, and apparently the General Counsel does not contend, that Scheuermann's discharge fell within the proscription of proviso A to Section 8 (a) (3) of the Act; namely, that membership in the Respondent Union was not available to him "on the same terms and conditions generally applicable to other members." Accordingly, the undersigned deems it unnecessary for the purposes of this Report to consider Scheuermann's discharge in relation to such proviso, except to note that if this were an issue in the case, the undersigned's conclusions in that regard would be those briefly noted in footnote 40 *infra*.

the Act would indicate that Scheuermann's expulsion from membership in the Respondent Union on charges of dual unionism in March, 1949, and subsequent discharge in November, 1949, for failure to comply with the union-security provisions of the Respondents' contract, executed in October, 1949, would fall within the interdiction of the Act, inasmuch as it would appear that Scheuermann's "membership was * * * terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of * * * retaining membership." However, an examination of the Congressional history and enunciated Board policy in respect to the sections of the Act under discussion, reveal that to be violative of the Act the termination of the employee's membership in a labor organization referred to therein and his subsequent discharge must both occur within a period of time covered by a current contract. Thus, the report of the Senate Committee on Labor and Public Welfare states the following:

Under the amendments which the committee recommends, employers would still be permitted to enter into agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired if a majority of such employees have shown their intent by secret ballot to confer authority to negotiate such an agreement upon their representatives. But in order to safeguard the rights of employees after such a contract has been entered

into, three additional safeguards are provided:

- (1) Membership in the union must be available to an employee on the same terms and conditions generally applicable to other members;
- (2) expulsion from a union cannot be a ground of compulsory discharge if the worker is not delinquent in paying his initiation fee or dues

* * * It seems to us that these amendments remedy the most serious abuses of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability by eliminating "free riders" the right to continue such arrangements. (Emphasis supplied.)³¹

That an employee's expulsion from membership in a labor organization for reasons other than non-payment of dues and initiation fees and subsequent discharge must both occur during the term of a contract to be violative of the Act appears to have been the conclusion of the Board in the Pen and Pencil Workers case.³² There an employee, subject to a contract containing union-security provisions and expiring in 1948, was fined by the union in 1947, expelled from membership for failure to pay the fines, and discharged in 1947 upon the request of the union pursuant to the contract. In 1948, after the

³¹Sen. Rep. 105, 80th Cong., p. 7. See also, statements of proponents of the Act in debate, 93 Cong. Rec. A3141, 4317-8, 4401.

³²Pen and Pencil Workers Union, Local 19593, AFL, 91 NLRB No. 155.

execution of a new and valid union-shop contract, the employee was rehired, tendered her initiation fee and dues to the union, but refused to pay the outstanding fines. The union rejected her tender of initiation fee and dues upon her refusal to pay the fines and requested the employer to discharge her. The employer complied with the union's request. The Board held that the union had violated Section 8 (b) (2) by causing the employer to discriminate against the employee by insisting upon payment of the fines and rejecting her tender of dues and initiation fee, the meaning of which terms the Board held not to embrace the fines.

Inferentially, it appears that the Board did not consider the employee's expulsion from membership in the union under the prior contract to mean a denial or termination of membership in the union at a subsequent time when the employee became subject to the terms of a later union-shop contract. Indeed, to hold to the contrary would contravene the clearly expressed intent of the Congress to protect labor organizations by the provisos to Section 8 (a) (3) against "free riders"³³ and, as succinctly stated in the Respondent Company's brief, would enable employees subject to a union-shop contract to "violate their duties as members [of the contracting union] and force the Union to expel them and thereby enter at will into a privileged class, perpetually immune from union security provisions and

³³See *Union Starch & Refining Company*, 87 NLRB 779, for a discussion of this factor.

from any obligation of tendering dues or fees, and they could remain in that privileged category despite successive contracts which would otherwise impose new conditions of employment upon them in that regard." In view of these considerations, the undersigned finds that the fact that Scheuermann was expelled from membership in the Respondent Union for dual unionism in March, 1949, near the end of the closed-shop contract, does not, in itself, make his discharge, subsequently effected under the terms of a later union-shop contract, discriminatory.

The second question to determine is whether it was necessary for Scheuermann to tender an initiation fee and dues in order to comply with the 1949 contract's union-security provisions, of which it has been found Scheuermann had knowledge. The General Counsel contends that "if the employee whose membership has been terminated continues in employment past his expulsion up to the time of a new union security contract, all that can be required under the new contract is resumption of payment of dues as a condition for his reacquiring membership. Otherwise the union could exact fines from dual unionists in the form of a new initiation fee." Although the matter is not free from doubt, the undersigned is of the opinion that the argument of the General Counsel must be rejected and that the clear inference of the Board's decision in the Pen and Pencil Workers case is to the effect that Scheuermann was under the duty to tender both initiation fees and dues in order to comply with the contract. The fact that Scheuermann's tenure of employment with the Respondent Company remained unbroken

following his expulsion from membership in the Respondent Union in March, 1949, until the Respondent Union's request for his discharge in November, 1949, for noncompliance with the union-security clause of the 1949 contract is not, in the undersigned's opinion, sufficient to distinguish the instant proceeding from the Pen and Pencil Workers case, in which there was a break in the period of the employee's employment between the date of expulsion from membership under one contract and the execution of the second. In each instance, the employees were in the same position following their expulsion from the contracting union; each was a new employee for the purpose of compliance with the union-security provisions of the new contract and as to each of them, but for the contracting union's expulsion from membership, they would not have been under the necessity of tendering a new initiation fee. Since it is uncontraverted that Scheuermann failed to tender an initiation fee within the time proscribed by the 1949 contract, the undersigned finds that in effectuating his discharge, neither of the Respondents violated the Act.

On the other hand, assuming arguendo, in accordance with the General Counsel's contention, that the only duty required of Scheuermann "under the new contract is resumption of payment of dues as a condition for his reacquiring membership," it is clear that the evidence fails to sustain the General Counsel's contentions and argument in this regard. The General Counsel argues that since the Respondent Union on June 3, 1949, returned 3 months' dues

submitted by Scheuermann following his expulsion from membership with the statement "you are, therefore, not a member of the International Association of Machinists and we cannot accept dues from you," the Respondent Union under general principles of contract law "was impliedly obligated to make known to Scheuermann that it would let bygones be bygones and would accept his tender." (Emphasis supplied.) In support of his argument, the General Counsel cites the following proposition:

Where an act to be done by one party can be done only on a corresponding act being done or allowed by the other party, an obligation by the latter to do or to allow to be done the act or things necessary for the completion of the contract will be necessarily implied.³⁴

The General Counsel also relies upon the following principle:

Inasmuch as the "law neither does nor requires idle acts," a strict and formal tender is not necessary * * * where it is reasonably certain that a tender will be refused if made.³⁵

In support of his argument, the General Counsel contends that Steward Smiley's refusal to accept Ollis' tender of dues between October 10 and 17, made in Scheuermann's presence, demonstrated the futility of a tender of dues on the part of Scheuermann.

³⁴ 17 Corpus Juris Secundum 910.

³⁵ 24 Cal. Jur. 513.

The undersigned is of the opinion that the General Counsel's argument in this regard is without merit because it is based upon the false premise that the Respondent Union was obligated to accept the tender of Ollis' dues and, more generally, to admit to membership any applicant subject to the terms of its contract with the Respondent Company.

The terms of the Act do not require the union holding a union-shop contract to accept all applicants for membership and this fact was clearly recognized by the proponents of the Act in the Congress.³⁶ And the Board has held that proviso B of Section 8 (a) (3) extends "protection to any employee who tenders periodic dues and initiation fees without being accorded membership."³⁷

Thus, in order to comply with the union-security provisions of the Respondents' contract, employees who were not members of the Respondent Union were under a duty to tender dues and initiation fees within the proscribed time. Upon receipt of such a tender, the Respondent Union acquired a privilege of either accepting or rejecting the tender.³⁸ In the

³⁶93 Cong. Rec. 4400, A3141.

³⁷Union Starch & Refining Company, 87 NLRB 779, 784.

³⁸For the purpose of this Report, it is unnecessary to analyze any additional rights or privileges of the Respondent Union; e.g., whether it had a privilege of accepting the dues tendered without extending membership to the employee making the tender. See Senator Taft's statement, 93 Cong. Rec. 5088, 5089.

event an employee's tender of dues and initiation fees was rejected, he acquired a right under the Act that the Respondent Union should not demand his discharge and the Respondent Union was under a corresponding duty not to request his discharge.

Therefore, if these principles are applied to the incident when Steward Smiley rejected Ollis' tender of dues in Scheuermann's presence, the undersigned cannot agree with the General Counsel's argument, even accepting the theory that Ollis or Scheuermann was obliged only to tender dues in order to comply with the Respondents' union-shop contract, that Scheuermann's obligation to tender dues was thereby extinguished. Upon Ollis' tender of dues and their rejection by the Respondent Union,³⁹ he acquired a right that the Respondent Union should not request his discharge and the Respondent Union assumed a duty that it should not request his termination of employment. This duty in respect to

³⁹For the purpose of discussion, it will be assumed that Smiley's rejection of Ollis' dues was within the scope of his authority as an agent of the Respondent Union and that such action by Smiley was attributable to it. The matter is not free from doubt, however, in view of the requirement of the Respondent Union's constitution that applications for membership be accepted or rejected by vote of the membership body, as well as the fact that no official of the Respondent Union had authority to reject applications for membership and that Smiley's rejection of Ollis' tender of dues was based not upon instruction of the Respondent Union but upon Smiley's belief "if you are not a member you don't have to pay dues, so why should I collect dues if they are not a member?"

Ollis, the Respondent Union observed. Whether Scheuermann was present or far removed at the time of the incident, Ollis' tender did not encompass a tender on the part of Scheuermann and the latter made no effort to comply with his duty to tender dues. He did nothing to fulfill his duty to comply with the union-security provisions of the Respondent's contract and to acquire the protection of proviso B of Section 8 (a) (3).⁴⁰ Accordingly,

⁴⁰The fact that in June, 1949, the Respondent Union returned to Scheuermann 3 months' dues submitted by him after his expulsion from the Respondent Union in March, 1949, can in no way mitigate Scheuermann's duty to tender dues and initiation fees to comply with the union-shop provisions of the contract executed by the Respondents in October, 1949. Nor does the Respondent Union's refusal, subsequent to Scheuermann's discharge, to accept his application for membership affect the conclusions reached herein. Since Scheuermann had failed to acquire the protection of the Act by complying with the union-shop provisions of the contract within the proscribed time, the Respondent Union was free to take any action it wished upon any offers or tenders of Scheuermann after his discharge. Nor do the provisions of the constitution and bylaws of the Respondent Union that reinstatement of expelled members may not be effected until payment of outstanding fines lend any support to the General Counsel's contentions inasmuch as Gorham testified credibly that such provisions may be waived by the Respondent Union. Moreover, upon the record in the instant proceeding, it would be, as the Respondent Union states in its brief, "nothing but idle speculation at its best or a downright perversion of the facts and motives obviously involved in this case, to conclude either (1) that the Union would have refused to admit

the undersigned finds that neither of the Respondents has engaged in violations of the Act as alleged in the complaint in respect to the discharge of Scheuermann.

In view of the foregoing conclusions, the undersigned finds that the evidence warrants no finding that the Respondent Company committed unfair labor practices within the meaning of Section 8 (a) (1) and (3) or that the Respondent Union has engaged in violations of Section 8 (b) (1) (A) or 8 (b) (2) of the Act. It will therefore be recommended that the complaint be dismissed in its entirety.

On the basis of the foregoing and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Westinghouse Electric Corporation (Sunnyvale Plant) is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. International Association of Machinists, Local No. 504, is a labor organization within the meaning of section 2 (5) of the Act.
3. Neither Westinghouse Electric Corporation (Sunnyvale Plant) nor International Association of

Scheuermann to membership on the same terms and conditions generally applicable to other members, if he had made a tender of his initiation fee within the proper time period, or (2) that the Union would have requested his discharge if he had made a tender, and the Union had rejected it.”

Machinists, Local No. 504, has engaged in any of the unfair labor practices alleged in the complaint.

Recommendations

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in the case, the undersigned hereby recommends that the complaint herein be dismissed in its entirety.

Dated at Washington, D. C., this 15th day of March, 1951.

/s/ FREDERIC B. PARKES, 2nd,
Trial Examiner.

United States of America, Before the
National Labor Relations Board

[Title of Causes.]

DECISION AND ORDER

On March 15, 1951, Trial Examiner Frederic B. Parkes 2nd issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief. The Respondent Company also filed exceptions and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, briefs and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, but only to the extent that they are consistent with the Decision and Order herein.

1. The Trial Examiner dismissed the complaint insofar as it alleges that the Respondent Union violated Sections 8 (b) (2) and 8 (b) (1) (A) and the Respondent Company violated Sections 8 (a) (3) and 8 (a) (1) of the Act by the discharge of employee Marovich on September 20, 1949, and the alleged attempt to discharge employees King, Pachorik, and Scheuermann on or about September 9, 1949.¹ Contrary to the General Counsel's contentions, the Board is not convinced by the clear preponderance of all the relevant evidence, that the Trial Ex-

¹These allegations were added to the complaint on motion of the General Counsel made at the hearing 1 year after the alleged occurrence of the unfair labor practices in question. Contrary to the Respondent Company's exceptions, as the alleged unfair labor practices occurred within 6 months of the filing and service of the original charge, these allegations were properly and timely added in the amended complaint. *Cathey Lumber Company*, 86 NLRB 157, *enfd.*, 185 F. 2d 1021 (C.A. 5); *Ferro Stamping & Manufacturing Co.*, 93 NLRB No. 252.

aminer's credibility findings are erroneous.² We shall therefore dismiss the complaint insofar as it alleges such violations.

2. The Trial Examiner found that Scheuermann failed to tender dues and a new initiation fee on or before the termination of the 30 day grace period under a valid union-shop contract and that therefore the Union did not violate Sections 8 (b) (2) and 8 (b) (1) (A) in requesting his discharge. The General Counsel excepts to this finding on the ground that the Union indicated to Scheuermann that his tender would not be accepted thereby extinguishing the duty to tender required by proviso (B) of Section 8 (a) (3) and Section 8 (b) (2). We find merit in the General Counsel's exception.

As more fully described in the Intermediate Report, on March 22, 1949, Scheuermann was fined \$500 and expelled from the Union for "dual unionism." In late March, Scheuermann offered Steward Smiley 1 month's dues but Smiley said: "I can't take dues from you. I have been told not to." On June 3, 1949, the Union returned dues payments made by Scheuermann during March and May,

²In so concluding, we do not rely on the Trial Examiner's findings that a conference involving union and respondent officials would not have been held in an office with a door open to the adjoining office of employee Anderson; that Andersen was not a disinterested witness because of her friendship with Scheuermann and employee Ollis; and that "it is indeed curious" that Andersen did not inform the General Counsel of the alleged occurrence until a year later.

stating, "You are * * * not a member of the International Association of Machinists and we cannot accept dues from you."

On October 10, 1949, the Respondents executed a valid union-shop contract, as was known to Scheuermann.³ Between October 10 and 17, 1949, employee Ollis, who was fined and expelled from the Union at the same time and for the same reason as Scheuermann, offered to pay dues to Smiley in Scheuermann's presence, but Smiley said, "You know I can't take dues from you guys." On November 11, 1949, after the expiration of the contracts' 30 day grace period, the Company discharged Scheuermann at the request of the Union for failing to comply with the union-shop clause of the contract.

On November 14, Scheuermann spoke with Business Agent Scott as follows:

"I told him I was out to try to * * * see what we could do about my being laid off at Westinghouse, and he said * * * Yes, Clyde, I think we can do something. You pay your back dues and your new initiation fee and the \$500 fine * * *"

³In so finding, however, we do not agree with the Trial Examiner that Scheuermann discussed the union-shop provision with Steward Nunez, a finding at variance with Nunez's confused testimony as to the time and substance of the conversation. Nor do we agree with the Trial Examiner that "inherent" in Ollis' offer to pay dues made in the presence of Scheuermann, is knowledge on their part of the union-shop clause. As to this point, the record is clear that Ollis' offer was prompted by taunts of "free rider" and a desire to rejoin the Union.

While the Union's actual violation of Section 8 (b) (2) must begin, if at all, on November 11, 1949, the date of Scheuermann's discharge, we do not agree with the Trial Examiner that events before and after the 30-day grace period under the union-shop provision of the contract may not be considered in assessing the Union's conduct. Section 8 (b) (2) of the Act limits the effect of union shop clauses by protecting employees against discharge upon the request of the contracting union for reasons other than "* * * failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership" in the union. Necessarily, therefore, we are concerned herein with the question of whether the reason assigned by the Union in requesting the discharge of Scheuermann, i.e., failure to tender dues and initiation fee, was, in fact, the true reason. Resolution of this question turns largely upon the Union's motive in requesting Scheuermann's discharge. What occurred before as well as that which followed may be as relevant in establishing motive as that which occurred during the critical 30 day grace period.⁴

Thus, in March and June, 1949, before the inception of the union-shop contract, the Union indicated that Scheuermann's offer of dues would not rectify his status as an expellee. Similarly, Smiley, in his rejection of Ollis' offer to pay dues made in the presence of Scheuermann during the 30-day

⁴Ferro Stamping & Manufacturing Co., *supra*.

grace period, singled out "you guys" as individuals whose good standing in the Union could not be restored by the payment of dues.⁵ The Union's attitude toward Scheuermann comported with the provisions of its constitution and bylaws by the terms of which expellees pay a reinstatement fee and, in addition, reinstatement may not be effected until unpaid fines "are remitted or paid in full." That the Union had no intention of remitting the \$500 fine and, indeed, considered payment thereof a condition both of Scheuermann's reacquiring membership and maintaining employment at the Respondent's plant, was clearly evidenced by Scott's

⁵While the Trial Examiner "assumed" that Smiley's rejection of Ollis' offer was within the scope of his authority as agent of the Union, he also indicated that the matter was not "free from doubt." In so observing, the Trial Examiner quoted Smiley's explanation made at the hearing, "if you are not a member you don't have to pay dues, so why should I collect dues if they are not a member." But Smiley's actual statements to Ollis and Scheuermann do not support the implication of his testimony that his rejection was not attributable to the Union. As shop steward whose duties included the collection of dues, Smiley was following union rules on the necessity for reinstatement before dues would be accepted when he stated to Ollis in October, 1949, "I can't take dues from you guys," and to Scheuermann in March, 1949, "I can't take dues from you. I have been told not to." We therefore find that in rejecting Ollis' dues, Smiley spoke as an agent of the Union.

The Trial Examiner's finding that the Union did not request Ollis' discharge because Ollis tendered his dues is rejected. Ollis was laid off prior to the expiration of the 30-day compliance period.

statement following the discharge that Scheuermann pay the fine to regain his job.

In view of the foregoing, we are of the opinion that, in asking the Company to discharge Scheuermann ostensibly because he failed to tender dues and initiation fee, the Union in reality asked for and obtained Scheuermann's discharge because of his nonpayment of the fine, a reason which the Act does not countenance.⁶ Consequently, we are convinced that the Union would not have refrained from requesting Scheuermann's discharge even if he had timely offered dues and a new initiation fee.⁷ In these circumstances, it was not incumbent upon Scheuermann to fulfill the obligation of "tender" in order to come within the protection of the Act for "a formal tender is * * * unnecessary in cases involving provisio (B) where the circumstances indicate that such a tender would have been a futile gesture."⁸

Our dissenting colleagues misinterpret our decision when they assert that "every employee, who has failed during the grace period" to tender "may now

⁶The Eclipse Lumber Company, 95 NLRB No. 59; Electric Auto-Lite Company, 92 NLRB No. 171; Pen and Pencil Workers Union, Local 19593, AFL, 91 NLRB No. 155.

⁷We assume, without passing on the question, that Scheuermann was obligated to "tender" a second initiation fee.

⁸The Eclipse Lumber Company, *supra*; The Baltimore Transfer Company, 94 NLRB No. 220.

allege that his discharge was requested for some reason other than this clearly obvious one." The duty to tender is extinguished only where, as in the present case, the union demonstrates by affirmative conduct and statements that tender would not have stayed its request for discharge. Otherwise, of course, an employee has the normal duty to go forward with his tender during the grace period.

Accordingly, we find that by causing the Respondent Company to discharge Scheuermann because he had been denied membership in the Respondent Union on some ground other than his failure to tender the dues and initiation fee uniformly required by the Respondent Union as a condition of acquiring membership therein, the Respondent Union has violated Section 8 (b) (2) of the Act. We further find that by causing the Respondent Company discriminatorily to discharge Scheuermann through the illegal application of its contract, the Respondent Union restrained and coerced employees in the exercise of the rights guaranteed by Section 7, and thereby also violated Section 8 (b) (1) (A) of the Act.

3. We are of the opinion that the Company did not know, or have reasonable grounds to believe that the Union sought Scheuermann's discharge for reasons other than failure to tender dues and initiation fee. Although Industrial Relations Manager Goodenough knew in March, 1949, that Scheuermann was expelled from the Union, there is no indication that Goodenough had reason to believe on

November 11, 1949, when confronted with the Union's request for Scheuermann's discharge, that the Union had refused to accept dues from Scheuermann or was then in any way insisting upon payment of the fine. And while Scheuermann stated to Superintendent McAuliffe on the occasion of his discharge, "You know * * * I was fined and expelled," and McAuliffe replied, "* * * it just wasn't quite right," we are not persuaded therefrom that the Company had reasonable ground for believing that the Union was then demanding Scheuermann's discharge for failure to pay the fine. Indeed, Goodenough inquired of the Union whether the request for Scheuermann's discharge complied with the terms of the contract and whether opportunity for membership was extended to Scheuermann without discrimination. The Union replied in the affirmative. In these circumstances we do not believe that the Company was required to explore the implications of Scheuermann's protestations, a matter which would necessarily lead to unwarranted intrusion in the internal affairs of the Union.

Accordingly, we find that in discharging Scheuermann on November 11, 1949, at the request of the Union, the Respondent Company did not discriminate in violation of Section 8 (a) (3) and 8 (a) (1) of the Act in that it had no reasonable grounds for believing that the Union's request was for reason's other than Scheuermann's failure to tender dues and initiation fee. We shall, therefore, in agreement with the Trial Examiner's result, dismiss the

complaint insofar as it alleges that the Respondent Company committed unfair labor practices.

The effect of the unfair labor practices
upon commerce

The activities of the Respondent Union, set forth above, occurring in connection with the operations of the Respondent Company described in Section I of the Intermediate Report, have a close, intimate, and substantial relation to commerce, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

Having found that the Respondent Union has engaged in unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent Union to notify both the Respondent Company and Scheuermann that it has no objection to Scheuermann's immediate reinstatement to his former or substantially equivalent position⁹ as an employee of the Respondent Company, without prejudice to his seniority or other rights or privileges. We shall also order the

⁹The expression "former or substantially equivalent position" is intended to mean "former position whenever possible, but if such position is no longer in existence, then a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

Respondent Union which we have found responsible for the discrimination suffered by Scheuermann, to make him whole, as closely as possible, for any loss of pay he may have suffered by reason of the Respondent Union's unlawful conduct.¹⁰

In accordance with our practice, the period from the date of the Intermediate Report to the date of the Order herein will be excluded in computing the amount of back pay to which Scheuermann is entitled, because of the Trial Examiner's recommendation that the complaint be dismissed.

Accordingly, we shall order the Respondent Union to pay to Scheuermann a sum of money equal to the amount that he normally would have earned as wages from November 11, 1949, the date of the discrimination, to 5 days after the date on which the Respondent Union notifies the Respondent Company and Scheuermann, in accordance with our Order, that it no longer has objection to his immediate reinstatement, less his net earnings¹¹

¹⁰The absence of any reinstatement order against the Respondent Company in no way affects our power to issue a back-pay order against the Union. *National Union of Marine Cooks and Stewards, CIO (George C. Quinly)*, 92 NLRB No. 147, and cases cited therein.

¹¹By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the Employer, which would not have been incurred but for the unfair labor practices and the consequent necessity of his seeking employment elsewhere. See

during such period.¹²

Consistent with the Board's recently established policy,¹³ we shall order that the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the date of Scheuermann's discharge to the termination of the Respondent Union's liability, as hereinbefore provided. The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Scheuermann would normally have earned for each quarter or portion thereof, his net earnings, if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the backpay liability for any other quarter.

Upon the foregoing findings of fact, and upon the entire record in these cases, the Board makes the following additional:

Crossett Lumber Company, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See Republic Steel Corporation v. NLRB, 311 U.S. 7.

¹²Our back-pay order shall be construed as set forth in Pen and Pencil Workers Union, Local 19593, AFL, *supra*.

¹³F. W. Woolworth Company, 90 NLRB 289.

Conclusions of Law

1. The Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

2. By restraining and coercing employees of the Respondent Company in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

3. The foregoing unfair labor practices engaged in by the Respondent Union are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Order

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that International Association of Machinists, Local No. 504, San Jose, California, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Westinghouse Electric Corporation (Sunnyvale Plant), its officers, agents successors, and assigns, to discharge or in any other manner to discriminate against its employees with respect to whom membership in the Respondent Union has been denied or terminated upon some ground other than failure to tender the periodic dues and initiation fees uniformly required

as a condition of acquiring or retaining membership or to discharge or in in any other manner to discriminate against its employees in violation of Section 8 (a) (3) of the Act.

(b) Restraining or coercing employees of Westinghouse Electric Corporation (Sunnyvale Plant), its officers, agents, successors, and assigns, in the exercise of their right to engage in or to refrain from engaging in any and all of the concerted activities guaranteed to them by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Notify Westinghouse Electric Corporation (Sunnyvale Plant), in writing that it withdraws its objections to the employment of Clyde W. Scheuermann and requests it to offer him immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Notify Clyde W. Scheuermann in writing that it has advised Westinghouse Electric Corporation (Sunnyvale Plant), that it withdraws its objections to his reemployment and requests it to offer him immediate and full reinstatement;

(c) Make whole Clyde W. Scheuermann for any loss of pay he may have suffered as a result of the

discrimination against him in the manner set forth in the section entitled *The Remedy*;

(d) Post in conspicuous places in its business office at San Jose, California, where notices are customarily posted, copies of the notice attached hereto as Appendix A.¹⁴ Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent Union's official representatives, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material;

(e) Mail to the Regional Director for the Twentieth Region signed copies of the notice attached hereto as Appendix A for posting, the Employer willing, at its plant in places where notices to employees are customarily posted. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by the Respondent Union's official representatives, be forthwith returned to the Regional Director for said posting;

¹⁴In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order" the words "A Decree of the United States Court of Appeals Enforcing."

(f) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the date of this Order what steps it has taken to comply herewith.

It Is Further Ordered that the complaint, insofar as it alleges that the Respondent Union violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act by conduct other than that found to be violative in this Decision and Order, and that the Respondent Company violated Section 8 (a) (3) and 8 (a) (1) of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., September 28, 1951.

PAUL M. HERZOG,

Chairman,

JOHN M. HOUSTON,

Member,

JAMES J. REYNOLDS,

Member,

ABE MURDOCK,

Member,

PAUL L. STYLES,

Member,

[Seal]

NATIONAL LABOR

RELATIONS BOARD.

John M. Houston, Member, dissenting in part:

I agree that the Union committed unfair labor practices as found by the majority. However, I cannot concur in the finding that the Company did not also violate the Act.

Admittedly, the Company knew in March, 1949, that Scheuermann was expelled from the Union. And while the Company was assured by the Union on November 11, 1949, that its request for Scheuermann's discharge was solely for failure to tender dues and initiation fee, Scheuermann informed McAuliffe on the same day that he was unable to comply with the union membership requirement of the new contract because, "You know * * * I was fined and expelled." McAuliffe replied that he had discussed the matter with Goodenough and "was of the opinion that it just wasn't quite right."

I am unable to construe Scheuermann's remarks to McAuliffe as other than a flat assertion that the Union was then insisting upon payment of the fine as a condition of Scheuermann's reacquiring membership under the new union shop contract. That the Company so construed Scheuermann's comments and, indeed, concurred in his view, was manifested by McAuliffe's admission that, in effect, the Union's discharge request was not as appeared on the surface.

In my opinion, therefore, the conclusion is inescapable that the Company knew or at least had reasonable grounds for believing that the Union's justification for demanding Scheuermann's discharge was mere pretext and that Scheuermann's nonpayment of the fine was in fact the real reason.

Accordingly, I would also find that the Respondent Company violated Section 8 (a) (3) and 8 (a) (1) of the Act.

Signed at Washington, D. C., September 28, 1951.

JOHN M. HOUSTON,
Member,

NATIONAL LABOR
RELATIONS BOARD.

Abe Murdock and Paul L. Styles, Members, dissenting in part:

We do not agree with the majority's decision that the Respondent Union violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act in requesting the discharge of Scheuermann. Rather we agree with the Trial Examiner that the failure of Scheuermann to take any action between October 10, 1949, and November 11, 1949, to become a member of the Respondent Union, as required by the valid union-security agreement between the Union and the Employer, is fatal to his claim to protection under proviso B to Section 8 (a) (3).

On the basis of the evidence before us we cannot accept the majority's assumption that if the Respondent Union had been approached by Scheuermann during the first 30 days of the contract it would unquestionably have rebuffed him and then insisted on his discharge. For the fact is undisputed that Scheuermann made not the slightest effort to obtain membership in the Respondent Union during the crucial period when the Union was obligated by law

to consider his application without discrimination. We need not guess whether the Respondent Union would have elected to pursue an unlawful course or would have recognized its legal obligations at that time. It was never put to that test. Whatever statements may have been made before and after this period, we cannot agree with the majority that these statements constitute a preponderance of evidence in favor of its finding that the Respondent Union in any event would have acted in an unlawful manner. Nor do we believe that Smiley's statement to Ollis in the presence of Scheuermann to the effect that Smiley could not accept dues from "you guys" was sufficient to relieve Scheuermann from the legal requirement that he himself take some affirmative action to acquire membership in the contracting Union. The futility doctrine upon which the majority and the General Counsel rely has been applied by the Board only under circumstances in which the Union clearly and convincingly made known to the employee concerned during a period when it was under an obligation to accept him on a non-discriminatory basis that it would not do so.¹⁵

In our opinion, this doctrine should be applied in cases of this nature sparingly and with great care. Applied loosely, it imposes an unwarranted burden upon parties who have executed lawful union-security provisions. As a result of the majority's decision in the instant case unions and employers hereafter act at their peril when they rely upon the

¹⁵See cases cited in footnote 8.

express language of their contracts, even though they have in good faith followed the detailed and exact requirements of the amended Act. Litigation is openly invited. For every employee, who has failed during the grace period of the contract to seek membership in the contracting union, may now allege that his discharge was requested for some reason other than this clearly obvious one. Every fisticuff adventure between union members may now become the basis to establish an unlawful motive for such a request where a lawful motive exists. We do not think that Section 8 (b) (2) requires this result. We prefer rather to rely upon the presumption, uncontroverted by substantial evidence during the period of its legal obligations, that the Respondent Union has acted in a lawful manner.

For these reasons we would affirm the Trial Examiner's dismissal of the allegations in the Complaint that the Respondent Union has violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act.

Signed at Washington, D. C., September 28, 1951.

ABE MURDOCK,

Member,

PAUL L. STYLES,

Member,

NATIONAL LABOR

RELATIONS BOARD.

Appendix A

Notice to

All members of International Association of Machinists, Local No. 504, and to all employees of Westinghouse Electric Corporation (Sunnyvale Plant)

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not cause or attempt to cause Westinghouse Electric Corporation (Sunnyvale Plant) to discharge or in any other manner to discriminate against its employees in violation of Section 8 (a) (3) of the Act, or to discharge or in any other manner to discriminate against employees with respect to whom membership in our union has been denied or terminated upon some ground other than failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

We Will Not restrain or coerce employees of Westinghouse Electric Corporation (Sunnyvale Plant) in the exercise of their rights to engage in or to refrain from engaging in any or all of the concerted activities guaranteed to them by Section 7, except to the extent that such right may be affected by an agreement requiring membership in

a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We Will notify Westinghouse Electric Corporation (Sunnyvale Plant) in writing and furnish a copy to Clyde W. Scheuermann, that we have withdrawn our objections to the employment of Scheuerman and that we request his reinstatement.

We Will make Clyde W. Scheuermann whole for any loss of pay he may have suffered because of the discrimination against him.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, LOCAL NO. 504
(Union)

Dated By
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-CA-328

In the Matter of:

WESTINGHOUSE ELECTRIC CORPORATION

and

CLYDE W. SCHEUERMANN, an Individual.

Case No. 20-CB-102

In the Matter of:

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 504,

and

CLYDE W. SCHEUERMANN, an Individual.

Room 634, Pacific Building,
821 Market Street,
San Francisco, California

Tuesday, September 5, 1950

PROCEEDINGS

Pursuant to adjournment, the above-entitled mat-
ter came on for further hearing at 10 o'clock a.m.

Before: Frederic B. Parkes, II,

Trial Examiner.

Appearances:

HARRY BAMFORD, ESQ.,

Pacific Building, 821 Market Street,
San Francisco, California,

Appearing on Behalf of the General
Counsel, National Labor Relations
Board.

SAMUEL L. HOLMES, ESQ.,
MESSRS. BROBECK, PHLEGER &
HARRISON,

111 Sutter Street,
San Francisco, California,

Appearing on Behalf of Westinghouse
Electric Corporation, the Respond-
ent Company.

A. C. McGRAW,
Grand Lodge Representative,

306 Pacific Building,
Oakland 12, California,

Appearing on Behalf of Interna-
tional Association of Machinists,
Local No. 504, the Respondent
Union.

* * *

Mr. Bamford: Yes, sir. At this time I should like to offer in evidence the formal documents in the case, which I have marked for identification as follows:

General Counsel's 1-A, a copy of the original Charge in Case No. 20-CB-102; 1-B, Affidavit of Service of G.C. 1-A, with return registry receipt attached; 1-C, a copy of the original Charge in Case No. 20-CA-328; 1-D, Affidavit of Service of G.C. 1-C with return registry receipt attached; 1-E, the original Charge in 20-CB-102; 1-F, the original Charge in 20-CA-328; 1-G, the Consolidated Complaint; 1-H, Order Consolidating Cases and Notice of Consolidated Hearing; 1-I, Affidavit of Service of G.C. 1-E through 1-H; 1-G, Answer filed by Respondent Company, Westinghouse. Attached thereto is a document which purports to be a contract between Respondent Company and Respondent Union and the offer in evidence made by General Counsel of G.C. 1-J does not contemplate that the Answer—rather than the contract appended to the Answer be admitted in evidence for any purposes except as explanatory [10*] to the Answer; 1-K, the Answer filed by Respondent Union; 1-L, the Order Rescheduling Hearing; 1-M, the Affidavit of Service of 1-L with return registry receipts attached.

Mr. McGraw: The Union has no objections to the admission of these documents.

Mr. Holmes: I object to the offer of 1-J on the ground that the General Counsel is attempting to

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

delete part of the Company's Answer. He should either offer the entire Answer or none at all. The contract attached to the Answer as an Exhibit is pleaded in the Answer as part of the Answer by reference to it in the body of the Answer. You can't delete the contract without deleting part of the Answer, and I object to an offer of part of the Answer. It must either be offered in toto or not at all.

Mr. Bamford: If I may answer, the entire document is itself attached; however, by my offer I do not wish to underwrite the foundation or the validity of the contract, but merely wish to state that the offer is made in the form of a pleading rather than the offer on an Exhibit.

Mr. Holmes: Obviously the Exhibit is part of the pleading. The first paragraph of the Answer reads: "Prior to the tenth day of October, 1949, Westinghouse Electric Corporation negotiated a collective bargaining agreement with International Association of Machinists, District Lodge 93, Local 504, which said agreement was executed on the tenth day of October, 1949. [11] A copy of said agreement is attached hereto, marked Exhibit 'A' and by this reference made a part hereof;" So that is as much a part of my Answer as though I had somebody copy the entire document in the Answer, so it cannot be excluded from the Answer without excluding the whole thing.

Trial Examiner Parkes: Well, are you taking the position that the contract should be stricken from his Answer, a motion to strike?

Mr. Bamford: If the pleader feels that the contract is relevant—and I believe it is—to his pleading, I would not move to strike the Answer. However, I don't want to be in the position of having the contract itself go into evidence for all purposes at this time without proper foundation.

Trial Examiner Parkes: Well, I think it is a part of the pleadings, what I would call the pleadings in the case. I did examine them last week.

Mr. Holmes: I think Mr. Bamford is a bit mistaken about this offer he is making. When he offers my Answer, he is offering my denial, and I don't expect that he is offering to prove everything that I have—or prove my denial. That is, of course, contradictory to his offer of the Complaint. I think he is just mistaken about the purport of his offer. He is simply making this pro forma offer in order to get these matters before the Trial Examiner. I can offer the Answer just as well as he, and if he doesn't want to offer my Answer, [12] then I shall.

Trial Examiner Parkes: It is just customary for the Answer of any Respondent to be included in the formal exhibits offered by the General Counsel at the outset of the hearing.

The formal pleadings, consisting of documents numbered for identification as 1-A through 1-M, are received in evidence.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 1-A through 1-M for identification and received in evidence.)

Mr. Bamford: Next, I should like to direct the Examiner's attention to paragraph I of the Complaint, which sets forth certain commerce facts as allegations of the Complaint. Respondent Company's Answer neither admits nor denies paragraph I; hence, I assume that it may be deemed to be admitted by failure to meet the allegations. Respondent Union's Answer, however, by paragraph I, pleads lack of knowledge. Now, it is my understanding that the parties will stipulate that if witnesses were called, that they would testify to the facts contained, or rather alleged in paragraph I of the General Counsel's Complaint. [13]

* * *

Mr. McGraw: Yes, I will so stipulate.

* * *

Mr. Holmes: We are prepared to stipulate that those same facts are true with respect to the year 1949. Do you want to make it more recent?

Mr. Bamford: As amended, is that stipulation acceptable?

Mr. McGraw: Yes, we will stipulate, we will accept that stipulation and join in it.

Trial Examiner Parkes: Very well, gentlemen.

Mr. Bamford: Will the Company also stipulate that the allegation in paragraph II that the Respondent Union is a [14] labor organization is correct?

Mr. Holmes: Sometimes, I am inclined to think it is a political organization, but I will enter into the stipulation.

* * *

Mr. Bamford: I think that the meaning of paragraph XI is clear in its intent, although I will concede that the paragraph may contain certain ambiguities. If the Counsel for the Respondent Company wishes, the General Counsel will undertake orally to amend the Complaint at this time to remove any possible ambiguity as follows:

The aforesaid acts of Westinghouse as set forth in paragraph V above, constitute unfair labor practices within the meaning of Sections 8 (a) (1) and 8(a) (3) and Sections 2(6) [15] and 2(7) of the Act, and aforesaid acts of the Union as set forth in paragraph IV above, and each of them, constitute unfair labor practices within the meaning of Sections 8 (b) (1) and 8 (b) (2) and Section 2 (6) and (7) of the Act. The final wherefore paragraph may stand in this motion to amend.

Trial Examiner Parkes: Does the motion satisfy your objections, Mr. Holmes?

Mr. Holmes: I think if the Complaint is amended in that respect it will be clear.

Trial Examiner Parkes: Any objection, Mr. McGraw?

Mr. McGraw: Well, I think there are probably many reasons why it should be dismissed on other grounds, although I doubt that this is the proper time to make such a motion.

* * *

CLYDE W. SCHEUERMANN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bamford:

* * *

Q. At any time were you ever employed by Westinghouse Electric Corporation in Sunnyvale?

A. Yes.

Q. Are you employed there at the present time?

A. No.

Q. When did your employment with Westinghouse terminate? A. November the 11th.

Q. And what year was that? A. 1949.

* * *

Q. How long have you worked at the Sunnyvale plant, Mr. Scheuermann?

A. I was employed there by the former company, Hendy, I believe it was June, 1941, and when Westinghouse took over, I continued in employment.

Q. And at the time of your termination, what was your job with Westinghouse?

A. I was a journeyman machinist on assembly.

Q. What shift were you working?

A. Swing shift.

Q. And who was your immediate supervisor in that occupation? A. Frank Judd.

Q. Now, during any time while you were at Westinghouse, and [17] prior to that at Hendy, were you a member of Machinists Local 504?

(Testimony of Clyde W. Scheuermann.)

A. I wasn't listening. Would you repeat that?

(Question read.)

The Witness: Yes.

Q. (By Mr. Bamford): When had you first joined the Machinists? A. In 1941.

Q. Now, in the spring of 1941 were you expelled from the Machinists? A. I was, yes.

* * *

Q. Now, in 1949, the first part of that year, had you become active on behalf of another labor [18] organization? A. Yes.

Q. What was the name of that labor organization?

A. Independent Westinghouse Workers Union.

Q. Did you hold an office in that organization?

A. Yes.

Q. And what was that office?

A. President.

Mr. McGraw: Well, Mr. Hearing Officer, I am going to object to the entire line of questioning here, on the ground, frankly, that such information is immaterial to the issues involved in this case. It doesn't make any difference whether we did or did not expel him, nor does it make any difference what the reasons were. It still doesn't go to the point of the charges and to the Complaint. Certainly there is a field of inquiry which we think is privileged and which the Act admits, and that is that the rules and regulations of a union as to its conditions for membership are not to be affected by this particu-

(Testimony of Clyde W. Scheuermann.)

lar law, and so the aspect of going into these things that don't go to the point at issue, opens up a field of inquiry which we think broader than necessary insofar as these particular charges are concerned. We have admitted in our Answer, actually, the fact that he was discharged for cause. If now it becomes necessary that we must prove that we had good cause, it is all right with us, but frankly we [19] think that it is immaterial and irrelevant, and the relationship of this man to this union is none of the Board's business, whether you have charges before it or not, and no matter what the charges are. The question comes down, frankly, to whether or not within a short period of time this man offered to pay dues or whether he didn't, or whether or not he made an application for reinstatement or whether or not he didn't, and those are the only facts that have any bearing on the charges here.

Mr. Holmes: I join in Mr. McGraw's objection, not necessarily on all of the same grounds, but certainly on the ground that in point of time these matters that Mr. Bamford is presently going into are immaterial and irrelevant. They occurred—he is talking about things that occurred in the spring of 1949, and the acts complained of in the Complaint, or the act complained of took place on November 11th, so it would be eight or nine months later, and certainly unless there is some preliminary tying in of these various occurrences, I think that acts which occurred in the spring of 1949 are immaterial.

(Testimony of Clyde W. Scheuermann.)

Trial Examiner Parkes: Mr. Bamford?

Mr. Bamford: Well, I shall treat the joint and several objections of Respondents as anticipating my next question—I believe there is presently no question before the witness—and argue on that basis. The proviso, the second proviso to Section 8 (a) (3) of the Act reads: [20]

“That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.”

* * *

Mr. Bamford: One, it certainly is enlightening and background evidence; two, the testimony of this witness will [21] certainly establish that the witness' further testimony is inherently credible and that the Respondent Union bore him a long-standing grudge. The expulsion and the fine from the union set up the picture of what later occurred. Hence, I think it is very relevant.

Mr. Holmes: I never heard of any justification for testimony on the ground it is going to make something that the witness says later credible.

(Testimony of Clyde W. Scheuermann.)

Trial Examiner Parkes: Objections overruled. I believe it is proper examination in this line for the General Counsel's case. However, we are not here trying the merits for the witness' expulsion from the union, if indeed he was expelled from membership in the union. That is simply a fact that Mr. Bamford must show in order to carry out his theory of the case, but we are not going into the merits of that expulsion, again as I say, if he was expelled. I do not know.

Mr. Bamford: I intend to pursue it no further. I just merely asked the witness a preliminary question to explain how he got in trouble with the Respondent Union; the nature of that trouble will not be explored any further.

Mr. McGraw: Mr. Trial Examiner, do I understand your ruling to mean that Mr. Bamford is now free to proceed to try and prove a grudge? By his own statements he said that he wanted to go into this to show that there was a grudge and that was material to him. [22]

Trial Examiner Parkes: Well, he made that statement. We will wait until he continues with the examination to see whether that issue is raised.

Q. (By Mr. Bamford): Now, in March of 1949 were you notified by the Respondent Union, Local 504, I.A.M., of charges that had been placed against you by that union?

Mr. McGraw: Objection.

Mr. Holmes: May I have a continuing objection to this line?

Trial Examiner Parkes: You may, sir.

(Testimony of Clyde W. Scheuermann.)

Mr. Bamford: Did you hear the question?

Trial Examiner Parkes: Mr. McGraw has an objection.

Mr. McGraw: I object, Mr. Hearing Officer. We have already admitted in our Answer that he was expelled for cause. I don't see why we have to go beyond that particular admission, and we actually certainly appear to be going into his trial, and the reasons for it, and I renew my objection that the entire line and this particular question is immaterial and irrelevant and shouldn't be gone into.

Trial Examiner Parkes: Well, I assume the position of Mr. Bamford is that this is material in that it may cast light upon the knowledge of the company as to the reason for the expulsion of Mr. Scheuermann.

Mr. Bamford: That is correct, sir, and the motive underlying the union's request for his discharge to the company. [23]

Mr. Holmes: You say that goes to prove knowledge of the company?

* * *

Q. (By Mr. Bamford): In March, 1949, were you notified by Local 504 that charges had been placed against you? A. I was. [24]

Q. Now, I show you what purports to be two letters to you from Local 504, both dated March 4, 1949, and ask you if you can identify these documents as having been received by you?

A. Yes, I received those.

(Testimony of Clyde W. Scheuermann.)

Mr. Bamford: May they be marked for identification as General Counsel's exhibit next in order?

Mr. Holmes: Which is which?

Mr. Bamford: Well, I shall ask the reporter to mark the letter signed by Babcock with the attachment as General Counsel's Exhibit 2 for identification, and the letter signed by the Trial Committee as General Counsel's Exhibit 3 for identification.

(Thereupon the documents referred to were marked General Counsel's Exhibits Nos. 2 and 3 for identification.)

Trial Examiner Parkes: Are you offering them at this time?

Mr. Bamford: At this time General Counsel's Exhibits 2 and 3 for identification are offered in evidence.

Mr. McGraw: We object on the ground it is irrelevant and immaterial and doesn't go to any of the issues in the case.

Mr. Holmes: I object to the documents also on the ground they are incompetent, irrelevant and immaterial; they have no bearing upon any of the issues raised in the Complaint against the company and there is no proof that the company had [25] knowledge of these documents.

Trial Examiner Parkes: The objections are overruled. General Counsel's Exhibits 2 and 3 are received in evidence.

(The documents heretofore marked General Counsel's Exhibits Nos. 2 and 3 for identification were received in evidence.)

(Testimony of Clyde W. Scheuermann.)

GENERAL COUNSEL'S EXHIBIT No. 2

International Association of Machinists

Local No. 504

P. O. Box 311

San Jose 2, California

45 Santa Teresa St., Room 208

March 4, 1949

Registered

Mr. Clyde Scheuermann

177 So. 26th St.

San Jose 2, Calif.

Dear Sir and Brother:

In compliance with Article K, Section 1 of the Grand Lodge Constitution, you will find enclosed a copy of the charges filed against you by Business Agent Gorham relative to your having violated Article 24, Section 2 of the Grand Lodge Constitution.

Fraternally yours,

RAY BABCOCK,

President.

CD:ja

enc. (2)

(Testimony of Clyde W. Scheuermann.)

(Copy)

45 Santa Teresa St.

Room 208

March 4, 1949

Machinists' Local 504, I. A. of M.

45 Santa Teresa St., Room 208

San Jose, California

Attn.: Mr. Ray Babcock, Pres.

Dear Sirs and Brothers:

I am hereby formally filing charges against Brother Clyde Scheuermann.

I charge that Brother Clyde Scheuermann has violated Article XXIV, Section 2 of the Grand Lodge Constitution.

Fraternally yours,

F. W. GORHAM,

Asst. Business Agent.

FWG :ja

cc: Clyde Scheuermann

Trial Committee

Received in evidence September 5, 1950.

(Testimony of Clyde W. Scheuermann.)

GENERAL COUNSEL'S EXHIBIT No. 3

International Association of Machinists

Local No. 504

San Jose 2, California

45 Santa Teresa St., Room 208

March 4, 1949

Registered

Mr. Clyde Scheuermann

177 So. 26th St.

San Jose 2, Calif.

Dear Sir and Brother:

This is to advise you that a hearing will be held with a Trial Committee relative to the charges preferred against you by Business Agent Gorham.

Your presence is requested at said trial in order to have all the facts clearly submitted and an impartial and fair decision rendered by the Trial Committee.

Said meeting will be held on Tuesday, March 8, 1949, at 8:00 p.m. in the Machinists' Office, Room 207, 45 Santa Teresa St., San Jose, California.

Fraternally yours,

TRIAL COMMITTEE,
LOCAL 504, I. A. of M.

HENRY SMITH,
JOHN BENTZ,
HARRY LAWRENCE.

Received in evidence September 5, 1950.

(Testimony of Clyde W. Scheuermann.)

Q. (By Mr. Bamford): Now, General Counsel's Exhibit 3 requests your presence at a meeting on Tuesday, March 8, 1949, so that you may appear—so that you might have appeared, to be at a trial mentioned in the letter.

Did you, in fact, attend a trial of that nature?

A. No.

Q. Did you notify the union or request the trial be postponed or set differently?

A. Yes. I wrote a letter requesting that it be held over to some time more convenient, because I worked the swing shift at the time it was held.

Mr. Bamford: Can you hear him? I think you can speak a little louder, please.

Q. (By Mr. Bamford): Did you receive a reply to your letter? A. No.

Q. Now, sometime later, did you receive a communication from the union that you had been expelled and that a fine of \$500.00 had been lodged against you? A. I did. [26]

* * *

Q. (By Mr. Bamford): Now, I show you what purports to be a letter from Local 504 to you, dated May 12, 1949, and ask you if you can identify it as having been received by you?

A. Yes, I received it.

* * *

Trial Examiner Parkes: The objections are overruled. General Counsel's Exhibit 4 is received in evidence.

(Testimony of Clyde W. Scheuermann.)

(The document heretofore marked General Council's Exhibit 4 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 4

International Association of Machinists

Local No. 504

San Jose 2, California

Room 208, Labor Temple,
45 Santa Teresa Street.

May 12, 1949.

Registered

Mr. Clyde Scheuermann,
177 So. 26th St.,
San Jose, California.

Dear Mr. Scheuermann:

Please be advised that we have been informed by General Secretary Treasurer Eric Peterson that the \$500.00 fine imposed against you by Lodge 504 has been approved by the Executive Council and that the Grand Lodge records have been indicated to show that you have been fined the sum of \$500.00 and expelled from membership.

Very truly yours,

/s/ JAMES LeBLANC,

Res. Secy.

/as

Received in evidence September 5, 1950.

(Testimony of Clyde W. Scheuermann.)

Q. (By Mr. Bamford): Now, at or about the time of the trial and your expulsion from the union, had you been paying dues to the I.A.M.?

A. Yes, I was. [27]

Q. On a still later occasion were those dues returned to you? A. They were.

Q. Now, I show you what purports to be a letter from Local 504 to you, dated June 3, 1949, which returns certain dues and which states that, "We cannot accept dues from you," and I shall ask you if you can identify this document as having been received by you?

A. Yes, I received that.

* * *

Trial Examiner Parkes: The objections are overruled. [28] General Counsel's Exhibit No. 5 is received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 5 for identification, was received in evidence.)

(Testimony of Clyde W. Scheuermann.)

GENERAL COUNSEL'S EXHIBIT No. 5

International Association of Machinists

Local No. 504

San Jose 2, California

Registered

Room 208, Labor Temple,
45 Santa Teresa Street.

June 3, 1949.

Mr. Clyde W. Scheuermann,
Star Route,
Alma, California.

Dear Mr. Scheuermann:

Enclosed you will find your money order for \$2.00 which was recently sent to Local 504. Also a money order for \$4.00, \$2.00 of which was sent in the last of March and \$2.00 the first of May.

As you know, in accordance with the Constitution, the members of Lodge 504 voted to expel you on March 16, 1949. The General Secretary Treasurer of the International Association of Machinists advised Lodge 504 in a letter dated April 28, 1949, that the Executive Council of the International Association of Machinists had concurred with the action of Lodge 504 in expelling you and fining you the sum of \$500.00 for violation of the Constitution of the International Association of Machinists. You

(Testimony of Clyde W. Scheuermann.)

are, therefore, not a member of the International Association of Machinists and we cannot accept dues from you.

Very truly yours,

/s/ A. J. PIEROTTI, F.S.

encs.

Received in evidence September 5, 1950.

* * *

Q. (By Mr. Bamford): Now, you stated, I believe, Mr. Scheuermann, that you were discharged on November 11, 1949, is that correct?

A. Yes.

Q. From whom did you first hear of that discharge? A. From Mr. McAuliffe.

Q. And was he a superintendent at Westinghouse?

A. Yes, something like that. What is your title?

Mr. McAuliffe: That is about right. [29]

* * *

Q. (By Mr. Bamford): Now, where did you see Mr. McAuliffe? A. In his office. [30]

* * *

Q. Now, what was said and by whom during that conversation?

A. I think Mr. McAuliffe started the conversa-

(Testimony of Clyde W. Scheuermann.)

tion by saying he had a letter from the union. He said, "I will read it to you and then I will let you read it." He read the letter to me and then he handed it to me.

Q. And then did you read it? A. I did.

* * *

Q. Now, I show you what purports to be a [31] letter from District Lodge 93, I.A.M. to Mr. B. H. Goodenough, Manager, Industrial Relations, Westinghouse Electric Corporation, dated November 11, 1949, and ask you if you can identify this as the letter which you have just spoken about?

A. That is correct. [32]

* * *

Q. Can you tell me, please, Mr. Scheuermann, whether the name of Louis G. Gennai had been deleted at the time the letter was shown to you?

A. This is the way it was when I saw it.

Q. With the deletion and the pencil corrections, is that [33] correct—I mean the ink corrections?

A. Yes.

Mr. Bamford: General Counsel's Exhibit 6 is offered in evidence.

* * *

Trial Examiner Parkes: Very well. General Counsel's Exhibit 6 is received in evidence, and you may substitute a copy for the original.

(The document heretofore marked General Counsel's Exhibit No. 6 for identification was received in evidence.)

(Testimony of Clyde W. Scheuermann.)

GENERAL COUNSEL'S EXHIBIT No. 6

(Copy)

November 11, 1949.

Mr. B. H. Goodenough,
Manager, Industrial Relations,
Westinghouse Electric Corporation,
Sunnyvale, California.

Dear Mr. Goodenough:

We are requestiong Westinghouse Electric Corporation, Sunnyvale plant, to terminate the employment of [Name deleted*] Cleveland A. Norris and Clyde W. Scheuermann for failure to comply with Section 2 of the Agreement between Westinghouse Electric Corporation, Sunnyvale plant, and District Lodge #93, International Association of Machinists.

Very truly yours,

F. W. GORHAM,
Asst. Business Representative.

FWG:as

Copy to G.C.M. 11-17.

Received in evidence September 5, 1950.

*Deletion O.K'd by C. Schwartz 11/11/49.

(Testimony of Clyde W. Scheuermann.)

Mr. Holmes: Be sure it is conformed. [34]

Q. (By Mr. Bamford): Now, after he had read the letter—rather, after Mr. Goodenough had read this letter to you and you had read it to yourself, was there any further conversation between you—
Correction, Mr. McAuliffe.

A. Yes. After he read the letter, he said, “I have a copy of the agreement here. I will read the section—it refers to you and you may read it.” So he read it to me and then I read that section two I believe it was—

Mr. Holmes: Section what?

The Witness: Section 2, I believe it was.

Q. (By Mr. Bamford): Now, I show you—rather, I direct your attention to Section 2 of the purported contract between the union and the company, which is attached as Exhibit A to General Counsel’s Exhibit 1-J, which section purports to relate to union security, and I shall ask you to examine that and then tell us if that is the section which you and he read?

A. The wording, I am sure, is the same. It is not the same document.

Q. But that was the wording that appeared in the document which he showed to you, is that correct?
A. That is right. [35]

* * *

Q. Now, after you had read Section 2, was there any conversation between you and Mr. McAuliffe?

A. Yes. I said, “But I don’t believe this applies

(Testimony of Clyde W. Scheuermann.)

in my case," and he referred to the agreement and pointed to the line, and he said, "You mean this part?" and I took it from him and looked at it and I said, "Yes."

Q. Now, what part was that? Would you like to look?

A. Yes. It's something about equal rights. Where it said: "Provided, however, that the union shall not request the company to discriminate against any employee for non-membership in the Union if such membership is not available to the employee on the same terms and conditions generally applicable to other members, or if membership is denied or terminated for reasons other than the failure of the employee to tender the periodic dues or initiation fees uniformly required by the Union as a condition of acquiring or maintaining membership."

Q. And——

A. That is the part he referred to.

Q. That is the section he referred to, is that correct?

A. That is right. [36]

* * *

Q. Who was it that referred to that specific part of the section, you or Mr. McAuliffe?

A. When I finished reading the section I handed it back to Mr. McAuliffe and when I said, "I don't believe it refers to my case," he handed it over the table and said, "You are referring to this part of it?"

(Testimony of Clyde W. Scheuermann.)

Q. And that was the part you just read?

A. Then he reread it and I said, "Yes, that is what I referred to."

Q. Was there anything further said?

A. Yes.

Q. What was it?

A. He told me of how he happened to pick up the letter that day. He said he had been to Mr. Goodenough's office; Mr. Gorham presented the letter, and he said he talked to Ben about it and he was of the opinion that it just wasn't quite right, but he said Ben assured him that he had asked Mr. Gorham the three necessary questions and as far as he was concerned, why, they were going to abide by the agreement. [37]

* * *

Q. When he referred to Ben, who did he mean, if you know? A. Mr. Goodenough.

Q. And what was Mr. Goodenough's job?

A. Public Relations, I believe.

Q. Was he connected with the employment office in any way?

A. Well, you have got me confused. The employment office was Mr. Kelly, but it seems to me that Mr. Goodenough is over [38] and above Mr. Kelly, I believe. Whether he is Public Relations or not, I don't know.

Q. You don't know his exact title?

A. No.

Q. Is Mr. Goodenough present here in this hearing? A. Yes.

(Testimony of Clyde W. Scheuermann.)

Q. And is Mr. McAuliffe here present at the hearing?
A. Yes.

Q. Now, you also mentioned in this last testimony a Mr. Gorham. Who was he?

A. Assistant Business Agent, I think, of Lodge 504.

Q. Now, was there anything further said in this conversation with Mr. McAuliffe?

A. Mr. McAuliffe said that "I don't think they can make it stick, do you?" and I said, "No, I don't," with that, there was—well I won't elaborate.

Q. Well, tell us what you remember Mr. Schueermann.

A. Well, with that there was some lull, a lull in our conversation, and finally I broke the silence by asking, "Well, what do you expect me to do?" He said, "Well, they have asked me to terminate you and we are going to go through with it." Then he advised me how to go about it, and also asked me if I would try to clear out that night, out of the shop. [39]

* * *

Q. Now, did you return to the company on Monday?
A. I did.

Q. Prior to that, however, did you go to the I.A.M. office [40] to see if you could get things fixed up?
A. Yes, I did.

Q. And where is the I.A.M. office?

A. In San Jose.

Q. And what did you do there?

A. First I went to the desk and told the girl I

(Testimony of Clyde W. Scheuermann.)

wanted to make application for the union shop in Sunnyvale, and she gave me the blanks. I started to fill them out and she stapled them, and then she went to a set of files and I knew that she wasn't familiar with me when she did that, I knew she wasn't familiar with who I was or what my case was because she immediately went into Mr. Scott's office, the business agent, and when she returned, she said—she took the papers from me and wadded them up and threw them in the waste basket and said, Mr. Scott wanted to see me.

Mr. Holmes: I didn't hear his answer, the end of that answer. I am sorry.

Trial Examiner Parkes: Please read it.

(Answer read.)

Q. (By Mr. Bamford): Now, while you were there in an attempt to sign this application—

Mr. Holmes: I object to that. Mr. Bamford is again characterizing what the witness did. Let the witness testify. Don't characterize for him. I think that the question should simply ask for facts. [41]

Mr. Bamford: I will withdraw the question, but I would appreciate it if Counsel would let me conclude the question before objecting to it.

Q. (By Mr. Bamford): While you were there at the desk with the girl, was there anyone else present?

A. Yes, some other machinist walked in and apparently she knew him—

Mr. McGraw: I move to strike "apparently she

(Testimony of Clyde W. Scheuermann.)

knew him." that is obviously a conclusion of the witness.

Mr. Holmes: Let him finish.

Mr. McGraw: I thought he had finished.

Trial Examiner Parkes: Let him finish his answer.

The Witness: Apparently she knew him, because he said "What is this, a new one?" and she said, "Today is the deadline, you better sign one." I don't know who he was or haven't seen him since.

Mr. McGraw: Is that all of your answer?

The Witness: That is all, yes.

Mr. McGraw: I move to strike the entire answer as being a conclusion of the witness and hearsay. It has no bearing on the issues of the case.

Mr. Bamford: Well, I will join in that motion so far as the phrase "apparently she knew him," is concerned. The rest of the answer, I think is relevant and I believe it may stand. [42]

Trial Examiner Parkes: The phrase "apparently she knew him," may be stricken; the remainder of the answer may stand.

Q. (By Mr. Bamford): Did you recognize this other fellow as an employee at Westinghouse?

A. No, I did not.

Q. You had never seen him before, is that correct?

A. No.

Q. Well, did you, after she had said that Mr. Scott wanted to see you, did you see Mr. Scott?

A. I did.

Q. Whereabouts?

A. In his office.

(Testimony of Clyde W. Scheuermann.)

Q. And what was Mr. Scott's job?

A. He is Business Agent of 504.

Q. Is he Gorham's superior?

A. I believe that is the arrangement.

Q. Was there anyone else present when you saw Mr. Scott? A. No.

Q. What was said and by whom during this conversation?

A. I told Mr. Scott what I was there for and to try and see if there wasn't some way that some misunderstanding—or, some way it could be rectified, if I had overlooked any obligation and he said, "Well, Clyde, I think it can be fixed up all right if you pay your initiation fee and your dues and your \$500 fine." When he said the \$500 fine, that is—I kind of [43] laughed and I said, "Oh yeah?" and he said, "Well, I will tell you Clyde, I haven't followed the case." He said, "Frank has been on this. I will tell you what I will do, I will make you an appointment for anytime you say." So we decided on an appointment the next day at 10:00 o'clock.

Q. And by "Frank," he meant Frank Gorham, is that correct? A. Yes.

Q. Now, did that end the conversation with Mr. Scott? A. That did, yes.

Q. And then after this visit to the I.A.M. office, did you then go to the Westinghouse plant?

A. I did. [44]

(Testimony of Clyde W. Scheuermann.)

Q. Well now, after you had gone to the Westinghouse plant, did you see any Westinghouse official there concerning your discharge?

A. Yes, I saw Mr. Goodenough.

Q. And is that the same Mr. Goodenough of whom you have previously spoken?

A. That is right.

Q. Where did you see him?

A. In his office at the plant.

Q. Now, was there anyone else present?

A. No one. His secretary was in an outer room, in an adjoining room.

Q. Now, as best as you can remember, what was said and by whom during this conversation with Mr. Goodenough?

A. After preliminary hellos, I told Ben that I had been down to see Gorham or to see Scott and what had taken place. I told him I had an appointment with Gorham for the next day. I asked [46] him if there wasn't something that could be readily fixed up between us rather than to have it go this far. We talked about the fact—the letter that the union had sent, and he said he had asked Mr. Gorham the necessary questions, and when the agreement was written, he said, he made it very specific that it could be written—that section should be written word for word with the Taft-Hartley law. I told him that I didn't think it was much of a square deal on my part since I had no way of knowing what the conditions of the agreement were. He said, "Well, you were at union meetings." I

(Testimony of Clyde W. Scheuermann.)

said, "Yes, but we hardly go"—I believe I said, "Did you ever try to go to a union meeting after you were fired and expelled." I said I thought I should have some way of knowing what conditions I was working under. He said, "Well, after all, we are a big—got a lot of employees and we can't go around and tell everyone what their particular conditions are." After telling him that I had an appointment with Mr. Gorham for the next day, he asked me if I minded stopping in to see him after the appointment. I told him that I would. Outside of that it was a general conversation, goodbye, and I know he told me that he was there—I thanked him for his time and he told me he was there to assist me anytime, that was his job as a personnel director, to meet the public.

You still can't hear me, I guess. My voice is terrible.

Q. Now, prior to the conversation you had with Mr. McAuliffe, [47] had you ever seen a copy of the purported contract between the company and the Machinists? A. No, I hadn't.

Q. Did you know of its existence? A. No.

Q. Had the company at any time informed you of the existence of the contract? A. No.

Q. Had the union spoken to you about it?

A. No they had not.

Q. Were there any rumors about the plant which would lead you to conclude that the contract, in fact, had been signed?

A. There were rumors, yes. Working the swing

(Testimony of Clyde W. Scheuermann.)

shift, there were many rumors about whether the contract was signed and if it had been signed, what was in it, and being interested in union matters, I was trying to delve out what might be in the agreement, but nobody in our shift seemed to know anything about it.

Q. Did you keep your appointment with Gorham the following day on Tuesday? A. I did.

Q. And where did you see him?

A. In San Jose, at the hall, the union hall.

Q. Whereabouts in the hall did you see him?

A. At his desk. [48]

Q. Was there anyone else present?

A. The girls were in the background there. That was all.

Q. Did you have a conversation with Gorham?

A. Yes.

Q. And what was said, and by whom, during this conversation?

A. I very briefly told him why I was there and asked him if there wasn't—if I couldn't make application to abide by the union shop, and he said, "Clyde, I can't do that. You haven't got a job." And I said, "Is that your answer?" He said, "Yes," and I walked away.

Q. Did you return to the plant on any occasion after you had spoken to Gorham?

A. Yes, I called back to see Mr. Goodenough, as I said I would.

Q. And where did you see Mr. Goodenough on this occasion? A. In his office.

(Testimony of Clyde W. Scheuermann.)

Q. Was there anyone else present?

A. No.

Q. Was this the same day, Tuesday?

A. Yes. These dates, Monday and Tuesday—I know it was the following day. I cannot say whether it was the 29th or place the date at that time because it is all too far back in the background.

Q. Well, either the same day or within a day or so after you had seen Gorham, you saw Goodenough again, is that correct?

A. No, I saw Goodenough the same day. I went directly to his [49] office.

Mr. Holmes: I didn't hear the last of that.

The Witness: I went directly from Mr. Gorham.

Q. (By Mr. Bamford): And what was said and by whom during this second conversation with Mr. Goodenough?

A. I said I had been in to see Frank and he said—asked what answer I got and I told him the answer. I don't think he expressed any opinion whatever, just nodded his head, as much as to say, "I thought so." We talked——

Mr. Holmes: Are you through?

The Witness: What?

Mr. Bamford: He started again Counsel.

Mr. Holmes: If he is through with that answer, I would——

Trial Examiner Parkes: Let him finish the answer, then you can state your objection.

(Testimony of Clyde W. Scheuermann.)

Mr. Holmes: Yes.

Trial Examiner Parkes: Go ahead.

The Witness: Then we spoke again of the same thing we had talked about the day before. I still thought there should be a way—I asked him if there had been any comments about my work or any lack of cooperation since the election was over. He assured me that there hadn't been, but in the eight years I had worked there, if there had been anything wrong with my work the company would find a way to get rid of me. He said the management generally does. So just before I left, I asked [50] him if he had an agreement, a copy of the agreement or something—I would like to have it, I would like to know what was in it, and he said, "Yes, I think we could scare up one around here somewhere." At that, he called the girl and asked her if she could locate one, and presently she arrived with one and we looked it over and discussed the pros and cons for maybe a minute or two. And then, why, I asked him if I might have that copy and he assured me that I could. With that, we parted.

Mr. Holmes: Is that the end of the answer? I would like to have it read back, please.

Trial Examiner Parkes: Please read it back.

(Partial answer read.)

Mr. Holmes: I move to strike that portion, "as much as to say I thought so."

Mr. Bamford: I will join in the motion.

Trial Examiner Parkes: The testimony to the effect, "as much as to say I thought so." may be

(Testimony of Clyde W. Scheuermann.)

stricken. I may not have quoted the exact language, but I think the intent of my ruling is clear.

Mr. Holmes: May I hear the rest of it now? He has read part of it.

(Answer read.)

Mr. Holmes: I move that that portion be stricken as not responsive to the question.

Trial Examiner Parkes: Please read a little bit more in [51] advance of the portion referring to—I mean, where he says something about his being there eight years. I don't know what the testimony indicates, whether it is a statement of someone or——

Mr. Holmes: I thought it was his own statement.

Trial Examiner Parkes: Let us hear it again.

(Answer read.)

Mr. Holmes: I don't think that was intended to be by him as a statement from Mr. Goodenough. Apparently it is something he is interjecting there as an opinion and I don't think it is responsive.

Trial Examiner Parkes: Well, I suggest that the record seems to be clear on its face that that is a part of the conversation with Mr. Goodenough. If you have any doubt, I suggest you clear it up on cross-examination.

Mr. Holmes: Thank you.

Q. (By Mr. Bamford): Now, do you know Les Ollis?
A. I do.

Q. In 1949, was he also working for Westinghouse?
A. Yes.

(Testimony of Clyde W. Scheuermann.)

Q. Is he working there now? A. No.

Q. Do you know when his employment terminated there? A. Just shortly before mine.

Q. Does Ollis live with you, or rather did he live near you [52] at that time? A. Yes. [53]

* * *

Mr. McGraw: Well, I certainly join Counsel for the company here and I have a few of my own. Certainly this is going still further afield in the testimony about this particular witness and his relationship with the union. It is wholly immaterial and doesn't bear on any of the issues here, and actually goes into matters of union affairs; and if we are going to rebut such evidence, actually it is going to mean that we will probably be here all next week, because certainly it is going far afield from the charges. Now, to draw a conclusion of whatever statements might have been made by this steward to this man Ollis, that the same thing would apply to him, is absolutely ridiculous. In the first place, it wouldn't mean anything even if it happened to this man, let alone somebody not even involved in this particular charge.

Mr. Bamford: If I may be heard for a second, Mr. Examiner?

Trial Examiner Parkes: Yes.

Mr. Bamford: It is a common principle of contract law that where a tender is required, that the requirement of that tender is waived if the tender would in effect be a useless or idle act. I should be glad to cite authorities thereto. Now, presumably

(Testimony of Clyde W. Scheuermann.)

the defense of the company and of the union would be that this witness failed to make a valid tender of proper dues and initiation fees. I shall seek to establish through this witness that such a tender—that a tender was made by another individual, both in his own behalf and on [55] behalf of the witness during this period of time after the union shop election had been held, and that the tender was refused by a designated agent of the union.

Trial Examiner Parkes: Now then, it seems to me that that statement is a little bit different from your statement at the beginning. Was Ollie's tender for himself alone or for himself and this witness?

Mr. Bamford: The tender was for Ollis himself; however, the rejection included not only Ollis but any possible tender on the part of Scheuermann.

Trial Examiner Parkes: Well, I don't care to hear any more argument on the objection, gentlemen. It does seem to me initially that we are going a little bit further afield to bring in Ollis. However, I shall overrule the objection, without passing upon the legal argument and position of the General Counsel in respect to this line of questioning. I think that it is sufficiently material to this case to permit the witness to answer.

Mr. Bamford: Mr. Reporter, do you have the last question marked? If not, I think I know what it is and I can repeat it.

(Question read.)

(Testimony of Clyde W. Scheuermann.)

Mr. Holmes: If he knows.

Trial Examiner Parkes: Yes, if you know. [55]

* * *

Q. (By Mr. Bamford): Do you know if Ollis had been fined and expelled from the I.A.M.?

A. Yes.

* * *

Q. Well, how do you know that Ollis was expelled?

A. I saw the letter, the same as the letter that I got from the union.

Q. And he received a similar letter?

* * *

Q. Was it a letter addressed to Ollis, similar to General Counsel's Exhibit 4, which I will show you?

A. Yes, I believe it is.

Q. And do you know if Mr. Ollis received that letter at or about the same time you received yours?

A. Yes. [56]

* * *

Q. Well, do you know if a union shop election was held covering the unit in which you and Ollis were working in 1949?

A. Yes.

Trial Examiner Parkes: Did you vote in the election?

The Witness: No.

Q. (By Mr. Bamford): Were you working on the day the election was held?

A. Yes.

Q. Did you see the balloting; did you see the balloting at the election.

A. Yes.

(Testimony of Clyde W. Scheuermann.)

Trial Examiner Parkes: Did you know the purpose of the election? [57]

The Witness: Yes.

Mr. Bamford: Well, so that the record may be clear, at this point I think the Board may take official notice of the fact that in Case No. 20-UA-1943 a consent UA election was held August 25, 1949, in which a majority of the eligible voters voted to authorize a union security agreement, and that the certification of results issued following this election on September 7, 1949.

Trial Examiner Parkes: Mr. Witness, did you know the results of the election after it was over?

The Witness: Yes.

Mr. Bamford: I shall repeat my previous question.

Q. (By Mr. Bamford): To your knowledge, on any attempt following the union shop election, did Ollis try to pay dues to the I.A.M.?

A. Yes. [58]

* * *

The Witness: May I answer?

Q. (By Mr. Bamford): Yes.

A. Yes, we were becoming concerned because some of the boys began—some of our better friends were jokingly calling us “free riders” and wanted to know when we were going to pay our dues, and we said “Whenever they take them,” and a particular friend of mine told us we’d better get down and see Gorham and see what he was going to do about it. We said, “Don’t call us ‘free riders.’” And I

(Testimony of Clyde W. Scheuermann.)

asked Les if he had been able to pay dues and he said, no, he had offered them to Elmer Smiley and he wouldn't take them—who was the shop steward in the shop—and then as we walked into the dressing room one evening, we had come in on the swing shift as they were changing clothes and going off of the day shift, and we generally met in the corner—our lockers were there. There was Ollis and myself and Smiley and Nelson and Hank Groth. Hank and Nelson were old friends of mine for a long time, since when we started at Hendy, so we generally joked and passed the time of day. Elmer—I think Elmer started in the plant as my helper. I don't know if he was employed there before that, but it was about the time he came in so we talked rather freely and they said, "When are you 'free riders' going to start paying dues," or words to that effect; and Les is a little bit more sensitive than I [59] am and took it up and said, "How about us, Smiley said how about taking some dues now," and Smiley said the same answer he had given him many times before, "You know I can't take dues from you guys" and so that ended that particular time. [60]

* * *

Q. Now, on any occasion after the union shop election had been held, did you witness an attempt on the part of Les Ollis to pay dues to the I.A.M.?

A. Yes.

Q. Did this occur on more than one occasion to your knowledge? [61]

A. Yes.

(Testimony of Clyde W. Scheuermann.)

Q. Did you witness more than one attempt to pay dues? A. No, I only witnessed one.

Q. And when did that attempt take place?

A. In the locker room.

Q. When? A. As we were changing shifts.

Q. When, Mr. Scheuermann, not where—when did this happen?

A. When we were changing shifts.

Q. But, in relation to the year or the month?

A. Oh, very shortly before Les was terminated.

Q. And it took place in the locker room, is that correct? A. Yes.

Q. Who else was present?

A. Hank Groth, Nelson, and Elmer Smiley.

Q. Now, did Elmer Smiley hold an office with the I.A.M.? A. He was a shop steward.

Q. On any occasion have you ever paid dues to Elmer Smiley?

A. Most all of the past year or two.

Q. Now, how did it happen that Ollis attempted to pay his dues to Smiley?

A. There was an incident of kidding about “free riders.” It perturbed Ollis and he said, “How about it, Smiley? How about taking some dues now?” Smiley said, “You know I can’t take dues from you guys.” There was some more bantering and that was the [62] end of it.

Q. And had these fellows accused both you and Ollis of being “free riders?” A. Yes.

(Testimony of Clyde W. Scheuermann.)

Q. Who was present in the locker room at that time?

A. Hank Groth, Nelson, Les Ollis and myself and Smiley. We were grouped in one corner together, all our lockers were together.

Q. And you said that someone had been kidding you about being "free riders." Who was that?

A. Hank and Nels.

Q. And were they kidding both you and Ollis?

A. Oh, yes. [63]

* * *

Cross-Examination

By Mr. Holmes:

Q. Can you fix the date of that conversation that you say took place in the locker room when Mr. Ollis talked to Mr. Smiley?

A. Not exactly, no.

Q. Can you place it with respect to the date of your termination of employment?

A. Since Mr. Ollis was terminated three weeks prior to my termination, it would be hard to determine—it would be easier for me to determine as to when he was laid off.

Q. You say he was terminated three weeks before you were?

A. Since it was the closer date, yes.

Q. All right. Can you fix it with respect to his termination?

A. I think it would be—they were beginning to

(Testimony of Clyde W. Scheuermann.)

question us about these "free riders" right at the very last few days before he—I would say it was in the last week. I can't place it exactly because they didn't begin that until just the time Mr. Ollis was laid off, and frankly, he was glad to get out of there [66] because of that—

Q. I am not interested in that. Just answer my questions. Was it a week before, or two weeks, or three weeks before he was terminated?

A. Within the last week.

Q. A week. A. A week, yes.

Q. Is that as near as you can fix it?

A. That is as close as I would—would say it was within the last seven days.

Q. The last seven days? A. Yes.

Q. Do you know what day of the week it was?

A. No, I can't remember.

Q. Could you fix it with respect to the union shop election? How soon after the election?

A. The union shop election was held so far previous to that that I—

Q. It was held in August, wasn't it?

A. I don't recall the date.

Q. It was held in August, wasn't it, late in August?

A. I don't know. It is a matter of record, isn't it?

Q. I think it was stated in this record that it was August 25. Is that in accordance with your recollection?

A. I would say that was about right. [67]

(Testimony of Clyde W. Scheuermann.)

Q. Well, now, how long after that or how long before it was this conversation in the locker room?

A. A long while after that.

Q. It was after that? A. Yes.

Q. Can you say how long after, a week or two weeks, or three weeks?

A. Approximately—that is hard to say.

Q. Well, I know you can't give us an exact date, but I want your nearest estimate.

A. It was a long while after because——

Q. Well, how long is a long while, a month, or three weeks?

A. Possibly a month, possibly three weeks, yes.

Q. Three weeks to a month?

A. Three weeks to a month, yes.

Q. Any more than a month?

A. No, I don't hardly think so, because Mr. Ollis was laid off about that time.

Q. And you say it was—then, you would say it was the latter part of September?

A. When I was laid off—November 11th.

Q. This union shop election was August 25th. Now, if this conversation took place about a month later, that would be about the latter part of September. A. It was later than that. [68]

Q. It was later than that?

A. Yes, I am sure.

Q. Was it in September?

A. No, I believe it was considerable later than

(Testimony of Clyde W. Scheuermann.)

September, because it wasn't too far from the time that he was laid off—November, in November it would be two months. It wouldn't have been two months.

Q. Beg pardon?

A. It wouldn't have been two months from the time he was laid off, no.

Q. You were laid off in November?

A. November 11th.

Q. And you would say it was sometime between the last of September and the time Mr. Ollis was laid off, is that right?

A. That is right.

Q. He was laid off around what, the middle of November?

A. From three weeks to a month before I was.

Q. From three weeks to a month before you were?

A. Yes.

Q. Well, then, a month before you were laid off would have been somewhere around the 11th, between the 11th of October and the 17th or 18th of October, is that right?

A. I would say that would be it.

Q. Would you say that conversation took place between the end of September and the middle of October? [69]

A. The middle of October, yes, I could say that.

Q. Between the last of September and the middle of October?

A. That is right.

Q. Now, could we fix it any more exactly than that?

(Testimony of Clyde W. Scheuermann.)

A. No, I couldn't. I couldn't say that we could.

Q. Well, it was within, say, the two-week period, then, between the last of September and the middle of October, two or three week period, is that right?

A. I didn't understand that.

Q. I say, would you place it, then, as nearly as you can, in the two or three week period from the last of September to the middle of October?

A. I would say it was in the later part because——

Q. Later part of what?

A. Of—did you say the middle of October?

Q. Yes, I said from the end of September to the middle of October; now, is that as near as we can fix it?

A. The middle of October is the later date on it. I would say it was closer to the later date.

Q. It was closer to the middle of October?

A. Yes.

Q. Would you say it was in the first week or the second week of October; can you fix it that way?

A. It was just a few days, within three or four days of when Mr. Ollis was laid off, because——[70]

Q. A few days before he was laid off?

A. Just a few days, yes.

* * *

LESLIE E. OLLIS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bamford:

* * *

Q. Did your employment terminate in that year?

A. Yes, it terminated October 17.

Q. 1949? A. 1949.

Q. Now, what was your job immediately prior to your termination? [71]

A. I was a journeyman machinist on assembly, turbine assembly.

Q. What shift did you work?

A. Swing shift.

Q. Did you ride back and forth to work with Clyde Scheuermann at that time? A. Yes.

Q. Were you a close friend of Scheuermann?

A. Yes, I was.

Q. Now, in the Spring of 1949, were you expelled and fined \$500 by the I.A.M.?

A. Yes.

* * *

Q. Now, did you hear Clyde Scheuerman testify with respect to an incident of your attempt to pay dues to Smiley?

A. Yes, just a few minutes ago.

Q. Did such an incident take place?

A. It was one of several incidents, yes.

(Testimony of Leslie E. Ollis.)

Q. With respect to this particular incident——

A. Yes.

Q. (Continuing): ——when did that occur, to the best of your [72] knowledge?

A. I have tried to fix the date and I can't exactly, but to the best of my recollection, it was a few days before I was laid off, the occurrence that he is talking about.

Q. Would you say that it occurred within a week prior to your termination?

A. I am quite certain it was in the last week, because it came as a surprise when I got laid off and I thought possibly I might have a case——when I was laid off it came as a surprise and I thought I possibly might have a case similar to this, and I have checked back and remember having offered to pay dues at that——just a few days before and it was during the last week of my employment there.

Q. Now, where did this attempt to pay dues take place?

A. In the locker room that we used there.

Q. And to whom was the attempt made?

A. Well, I offered to pay dues to Smiley at that time and I offered, I believe I phrased it that we were willing to pay dues at any time, or possibly I said I am willing to pay dues, but I recall very definitely Smiley saying, as he had said before, "You know, we don't want any dues from you guys," * * * [73]

Q. Who was present during this conversation?

A. Well, there were quite a few people in there,

(Testimony of Leslie E. Ollis.)

because it was a change of shifts. The ones that I recall definitely were the same ones that Clyde recalled. There was Clyde himself, and Elmer Smiley, and Hank Groth and Nelson, and they—that is, we were grouped together there. There were others scattered around who may have heard it too. [74]

* * *

Q. How did it happen that you made that offer to Smiley, Mr. Ollis?

A. The fellows were kidding us and we had been called “free riders” a few times and I resented that very strongly, as it implies anti-union activity, and I didn’t feel at all guilty of that, and seeing Smiley there I thought it would be a good opportunity to clear the air to anyone around there. [75]

* * *

Q. Now, had the accusation of being “free riders” been directed against both you and Scheuermann?

A. Yes. I heard him called that and myself too.

Q. Was Smiley there when these accusations were made on this occasion?

A. Yes.

Q. Within earshot?

A. Yes.

Q. Prior to this occasion, had you made any attempt to pay dues or get back in standing with the union?

A. Several times, before and since.

Q. Well, before this, however—

A. Before, yes.

(Testimony of Leslie E. Ollis.)

Q. And what was the nature of those attempts?

A. The first attempt was in March. The old contract hadn't expired and I had been expelled and I went to Smiley and offered to pay dues and he told me I would be a damned fool to pay them because I had been expelled. I told him, regardless, that they had the contract then, I wanted to pay dues as long as they [76] had the contract, so he gave me a receipt for the money and said I was still being foolish, but he took them. That was the last time he took dues from me. Later, during the summer, there were three or four occasions when I offered to pay him dues.

Q. And on each of those occasions——

A. On each occasion I was refused.

* * *

Cross-Examination

By Mr. Holmes:

Q. How long have you worked for Westinghouse, Mr. Ollis?

A. About two and a half years, part of it for Hendy.

Q. You worked for Hendy before Westinghouse took over their plant? A. Yes.

Q. Had you been a member of the I.A.M. during that period? A. Yes.

Q. Had you been a member of Lodge 68 before being a member of——

A. Wait. I had been a member of the Aeronau-

(Testimony of Leslie E. Ollis.)

tical and Production Workers here in San Francisco years before. I don't—

Q. I am referring to your employment at the plant at Sunnyvale.

A. Oh, no. At no time there was I a member of Lodge 68. [77]

Q. Were you a member of Lodge 504?

A. 504. (Affirmative nod.)

Q. To whom had you regularly paid dues?

A. I usually paid dues at the office when I attended the union meetings.

Q. At the union office in San Jose?

A. At the union office in San Jose.

Q. Had you paid them in the plant before?

A. Perhaps once or twice, but not, certainly not, very often. In fact, I am not sure but what that one payment to Mr. Smiley in March was the only time. Whether I paid one or two of them—

Q. You say that is probably the only time you paid them?

A. It is possibly the only time. It is probably one or two other times.

Q. Do you know of any other times you paid them in the plant?

A. I don't recall exactly, no.

Q. You paid them to Smiley personally in March, 1949?

A. At that time, yes.

Q. Did you get a receipt from him?

A. Yes. [78]

(Testimony of Leslie E. Ollis.)

Q. What other stewards do you know of that were working there in the building?

A. Only one other, and he was much further away. I can't recall his name right now.

Q. Was it Louis Nunez?

A. Yes. Louis Nunez.

* * *

Q. When would you talk to Nunez?

A. Well, when ever he happened to be passing through. He [80] didn't work near where we worked. Most of the time he was up in the—where they make the turbine blades, around the corner in the building, but he would be passing through occasionally. [81]

* * *

Q. Were you aware that contract negotiations were going on during the late summer?

A. I knew they were going on, yes.

Q. How did you know that?

A. Well, there was talk all over the shop about—rumors, perhaps, but talk about what was going into the contract. [83]

* * *

Q. Where were you called a "free rider"?

A. Where?

Q. Yes.

A. Coming in to work and in the locker room and occasionally on the shift when we were working.

Q. Who called you a "free rider"?

A. Well, I can recall Hank and Nelson, both; they did it in a rather joking manner. I am quite

(Testimony of Leslie E. Ollis.)

sure Smiley did it the same way, and one or two of the other fellows, a crane operator and one or two of the others did it occasionally.

Q. They did it in a joking manner?

A. In a joking manner, yes.

Q. But you didn't take it that way?

A. I didn't take it as a joke, that kind of talk.

Q. Were you rather sensitive about it?

A. If you want to put it that way.

Q. But they appeared to you to be joking, is that right? A. Yes.

Q. All right. When did you first offer to pay dues after April?

A. Well, I certainly didn't offer to pay dues until after the election had been won by the Machinists, and then I offered on two or three occasions to Smiley.

Q. Now, would you fix the time of those, please, how long before your termination? [90]

A. Oh, that would have been, I would say, at least once a month during that—September, October, and probably August.

Q. Before the union shop election you offered to pay dues?

A. Possibly. I don't recall exactly. Until they won the election definitely—I tried to get back in.

Q. It has been stated in this record that the I.A.M. was certified as being eligible to enter a union shop contract on September 7, 1949, the election having been held on August 25th.

A. Yes.

(Testimony of Leslie E. Ollis.)

Q. Now, with respect to those dates, can you state when you first offered to pay dues?

A. No, I couldn't place it too close.

Q. Well, can you say whether it was before or after September 7th, the date when the certification was announced?

A. The certification for what, for the union shop?

Q. Yes.

A. Oh, I don't know. I believe I offered both before and after that, because after they won the election I made it a point to offer, and then a little while later I offered again, and then——

Q. All right. Now, tell me, you say as well as you can remember you did offer to pay dues before they won the election, is that right?

A. No, not before they won the election; before they were certified. [91]

* * *

Trial Examiner Parkes: May we have the date on the representation election?

Mr. McGraw: The certification was issued on July 19, 1949, in Case No. 20-RC-483.

Mr. Bamford: Was that the date of the election?

Mr. McGraw: That is the date of the certification.

Mr. Bamford: When was the election?

Mr. McGraw: It was prior to that. I don't remember.

(Testimony of Leslie E. Ollis.)

Mr. Bamford: My records show June 13, 1949, as the date of the certification election.

Mr. Holmes: The certification, I think, was July 18th, somewhere along in there.

Mr. Bamford: I am sorry, I take it back. The direction issued June 13th and the elections were held July 7, 1949.

Mr. McGraw: That is correct.

Mr. Bamford: Board's Supplemental Decision and Certification of Representatives issued July 19, 1949.

Mr. McGraw: That is correct.

Mr. Bamford: So that in answer to the Examiner's question, the representation election was held July 7, 1949. [92]

Trial Examiner Parkes: All right. Then you had the union shop election on August 25, 1949?

Mr. McGraw: That is correct.

Mr. Bamford: Yes, sir.

* * *

Q. (By Mr. Holmes): I want to get the time as near as possible, Mr. Ollis, when you first made your offer of dues.

A. I believe you have that time now.

Q. That was after the union shop election?

Mr. Bamford: Just a moment. That isn't what the witness testified to.

Q. (By Mr. Holmes): Was it before or after the union shop election; can you answer that?

A. I think it was both before and after the

(Testimony of Leslie E. Ollis.)

union shop election, but definitely after they won the representation, yes.

Q. Now, why did you offer dues after the representation election and before the union shop election?

A. Well, I offered dues at all times in order to get back into the union, every time that I offered them.

Q. That was the reason you offered them?

A. That was the reason I offered them. As short as a month ago I tried it.

Q. You offered the dues, then, sometime between July 18 and August 25, the first time? [93]

A. I would say yes.

Q. And you offered them a second time—strike that, please.

To whom did you offer them on that occasion?

A. Smiley.

Q. Smiley; where?

A. I believe where he works, I offered him dues a couple of times, anyway.

Q. All right. Then you offered them again after the I.A.M. had won its union shop election, is that right?

A. Yes, certainly.

Q. How soon after, do you know?

A. No, I don't.

Q. Whom did you offer them to?

A. Smiley.

Q. Where? A. Where he works.

Q. And did you offer Mr. Smiley dues again—

A. Yes, just before I was laid off.

(Testimony of Leslie E. Ollis.)

Q. On those first two occasions, were you alone when you did it?

A. I believe I was alone every time; when I was coming in to work and passing where he was working, I just walked over and talked to him.

Q. On those two occasions that you have related when you offered dues to Smiley, were you alone? [94]

A. Yes, I believe I was.

Q. And you say you offered dues to Mr. Smiley again shortly before you were terminated?

A. That is right.

Q. How long before?

A. Not over a week; probably only two or three days. It was just shortly before.

* * *

Q. Why did you offer your dues to Mr. Smiley on this third occasion, because you were called a "free rider"?

A. Well, I offered dues to Smiley to get back in the union. After I had been turned down a couple of times it became pretty obvious what the answer would be, as I said before, and being [95] called a "free rider" was the immediate occasion that made me offer them again.

Q. You were offering those dues in order to demonstrate something to those people who were calling you a "free rider"?

A. Either that, or have the dues accepted and get back in the union.

Q. I want to know which.

(Testimony of Leslie E. Ollis.)

A. I thought he would probably turn them down as he had before; if he didn't, so much the better.

Q. As a matter of fact, you were offering them just to clear the air, as you put it, weren't you?

A. Not exactly. I would have been very glad if he would have accepted them, any of the times.

Q. Did you offer your initiation fee also?

A. I don't know whether I did. I didn't on the last occasion, I don't believe, but I had offered the initiation dues on one of the other occasions when I told him I wouldn't pay any of the fine.

Q. When did you offer him your initiation fee?

A. On one of the other two or three occasions, whenever I offered him dues because I remember telling him, I wanted it to get back to Gorham that I wasn't going to pay any of the fine.

Q. I believe you testified you offered him dues on three occasions only? [96]

A. Well, I never said only, but I remember there were at least three occasions there, possibly more.

Q. Well, now, when did you offer initiation fees, on which occasion—the first one?

A. I am not sure which occasion.

Q. You don't know when you did it?

A. No.

Q. You didn't offer it the last time, though?

A. No, I don't believe I did.

Q. Did you have the money in your hand on the third occasion, in the locker room?

A. In my pocket.

(Testimony of Leslie E. Ollis.)

Q. You didn't have the money in your hand and offer it to him? A. No.

Q. What did you say to him?

A. I said, "Smiley, you know we are ready to pay dues any time you want," or words similar to that.

Q. Didn't you say a moment ago you didn't know whether you said "we" or "I"?

A. I still don't know. We were both standing there.

Q. You don't know whether you said "we" or "I"?

A. No, I don't.

Q. You said either "we" or "I" was ready to pay dues? A. That is right. [97]

Q. But you didn't offer him the money?

A. I wouldn't have had a chance, unless I had been awfully quick on the draw.

Q. You didn't have the money in your hand when you talked to Smiley?

A. No, I didn't have the money in my hand.

Q. Who else was present?

A. Clyde Scheuermann, Hank Groth, Nelson and Smiley, that I know of, and there were several others.

* * *

Q. What did Mr. Scheuermann say during this conversation—anything?

A. Oh, I don't know. He probably said something, but I don't — I remember what I said to Smiley and who the witnesses were. Those were

(Testimony of Leslie E. Ollis.)

the only things that stuck in my mind as being important.

Q. You don't remember Mr. Scheuermann saying anything at all, [98] then, is that right?

A. He probably said something.

Q. But you don't remember what he said?

A. I don't recall what he said, if he said anything, no.

Q. What had Mr. Smiley told you on the first two occasions that you talked about, when you offered dues?

A. Almost identically the same, I believe.

Q. What did he say?

A. "We don't want any dues from you fellows." It was always the same answer. A group of—Clyde and I together were the only two that had been expelled from the Machinists' section. We were always grouped together in the fights.

* * *

Q. Did you see Mr. Nunez during the last week when you were there at the plant?

A. I don't know. I don't recall whether I did or not. I don't remember talking to him.

Q. You don't remember talking to him?

A. No, I don't.

Q. Do you know a Mr. Klein? [99]

A. What is his first name?

Q. Kenneth Klein?

(Testimony of Leslie E. Ollis.)

A. No, I might know his face, but I don't recall the name.

Q. Do you know a Mr. Emil Tonascia?

A. Yes.

Q. Did he work there with you? A. Yes.

Q. Do you remember having any conversations with him about the contract negotiations or the signing of a contract?

A. No, I don't. He was a leaderman, and not my leaderman. I had very little occasion to talk with him, really.

Q. You don't recall——

A. I don't recall him, no.

Q. Do you know a Mr. William Ostrom?

A. Bill Ostrom—Bill, that is his first name—yes, I imagine I do. It sounds awful familiar, but I can't place where he worked or what he looks like right now.

Q. You don't remember any conversations with him, then, during the last month you were there at the plant? A. No, I am not sure.

Q. Do you know a Mr. Liebenthal?

A. Yes.

Q. Do you remember having any conversations with him during the last month you worked at the plant?

A. Well, we used to drink coffee together and stuff, once in a [100] while, and we talked a lot about all kinds of things.

Q. Do you recall talking to him about the contract negotiations?

(Testimony of Leslie E. Ollis.)

A. Oh, it is quite likely that we did talk something about it—but I wouldn't—I don't recall what the conversation was, or anything.

Q. Do you remember any conversation with him about the union shop contract or the fact that a contract had been signed? A. I——

Mr. Bamford: Just a minute. I would like to again object to this line of questioning, and if it is overruled, I would like a standing objection to this line. I think it is departing materially from the scope of the direct examination.

Trial Examiner Parkes: Objection overruled. You may have a standing objection to the line.

Q. (By Mr. Holmes): Who was your leaderman? A. Who was what? Judd was.

Q. Frank Judd?

A. Yes, but later—I can't think of his name right now—Roy Weirhauser.

Q. W-e-i-r-h-a-u-s-e-r? A. I presume.

Q. He was your leaderman at the time you were terminated? A. That is right.

Q. Did you have any conversations with him about the union [101] shop contract in the plant?

A. About the union shop contract?

Q. About a union shop contract in the plant?

A. No, not in the sense that you mean it.

Q. Well, in what sense did you talk to him about such a contract?

A. Well, there used to be a contract there when I first worked there, and up until March, and I don't doubt I talked with him about that contract.

(Testimony of Leslie E. Ollis.)

Q. I am referring to, say, the month before you were terminated?

A. I didn't know there was a contract, and I didn't have any conversation with him about the contract being signed, because I didn't know it was signed.

Q. You knew a contract was being negotiated?

A. Yes.

Q. Did you ever talk to Mr. Weirhauser about the negotiations?

A. Well, I imagine I did on a few occasions, about the negotiations, wondering what kind of raise we would get, and stuff like that.

Q. Did you say Judd had been your leaderman?

A. Yes.

Q. Up until what time?

A. I don't recall the date. It would be just a wild guess if I attempted it. [102]

Q. Did you have the same leaderman as Mr. Scheuermann just before your termination?

A. Yes, just before I terminated. I didn't earlier.

Q. How long had you been in the same gang?

A. It hadn't been long, because he came back—he had been on a leave of absence and he came back to work and he was transferred to our gang then. I would say maybe, oh, a couple of months would be my guess, before I was laid off.

Q. Was Mr. William Reynolds in that gang?

A. Not that I know of. The name isn't familiar.

Q. Can you tell me who else was in that gang?

(Testimony of Leslie E. Ollis.)

A. I can tell you probably the names of the ones I worked with.

Q. Could you give us the names?

A. I have a very poor memory for names.

Q. Were any of these people that I have asked you about working with you—Klein or Tonascia?

A. No, they were in different gangs.

Q. Ostrom? A. No.

Q. Liebenthal? A. No.

Q. Or Reynolds? A. No.

Q. Did you ever work with a man named Fred Kearns? [103] A. Yes.

Q. How about Frank Sommerfield?

A. Well, I was in a different gang from him, but I saw quite a bit of him.

Q. Horace Anderson?

A. Yes, he was under the same leaderman.

Q. You worked with those people, then, part of the time?

A. Some of those people I worked with and talked with quite a few of them.

Q. Do you remember anybody else you worked with?

A. Oh, a fellow named Fellman, who quit there several months before I was laid off, and Al Granger, who quit a few days, I believe, before I was laid off.

Q. Any others that you can recall?

A. There was a boy, Paul Barnes, I talked with him.

Q. Barnes?

(Testimony of Leslie E. Ollis.)

A. Yes. That is about all. Usually I just worked with one other fellow, small gangs.

Q. Before you were terminated, did you ever go to see Mr. Gorham? A. Go to see him?

Q. Yes, between July 19th and the time you were terminated, did you ever go to Mr. Gorham's office to see him?

A. No, nor did he ever come to see me.

I don't suppose we had anything to talk about. [104]

Q. Did you ever talk to any other union official or officer or agent?

A. I talked to Babcock once during that period.

Q. When did you talk to him?

A. Well, that was fairly early, that was back in—I guess in March.

Q. Now, confining yourself to the period from July 19th until you were terminated, did you ever talk to any union officer or business agent?

A. No. I talked with Nunez once in a while, but Smiley was the only one really close.

Q. Nunez and Smiley, then, the stewards, were the only ones you talked to so far as you know that had any authority in the union?

A. Yes. [105]

* * *

CLYDE W. SCHEUERMANN

a witness called by and on behalf of the General Counsel, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Holmes:

Q. Mr. Scheuermann, I understand that [113] you worked at the Westinghouse Plant, or for the predecessor at that plant since 1941, is that correct?

A. That is correct.

Q. For how long had there been a union shop or a closed shop contract at that plant?

A. Will you repeat that? A union shop or closed——

Q. A union shop or a closed shop contract?

A. I wouldn't know. I don't know whether we had a closed shop contract before or not, I am not sure.

Q. Do you know whether you had to belong to a union to work there? A. I knew that, yes.

Q. How long had that condition been true?

A. I understood it to be true from the time I went to work there.

Q. From 1941 on? A. 1941 on.

Q. You were aware of that? A. Yes.

Q. How did you learn it, when you went to work there?

A. I was approached by a shop steward and asked to join.

Q. And that is how you learned of it?

A. Yes.

(Testimony of Clyde W. Scheuermann.)

Q. Then you just continued to pay your dues and asked no questions about it after that?

A. That is right. I was initiated. [114]

* * *

Q. And you continued to be a member of the union up until the Spring of 1949?

A. That is right.

Q. Where did you pay your dues?

A. I used to pay them in the shop.

Q. You paid them in the shop? A. Yes.

Q. Whom did you pay them to?

A. It was customary to pay them to Elmer Smiley in the last year.

Q. In the last year? A. Yes. [116]

* * *

Q. Now, about that time, that is, the time these letters were written—March of last year—you became active on behalf of another labor organization, didn't you? A. That is right.

Q. As a matter of fact, you became President of an organization, didn't you? A. Yes.

Q. Had you been a union officer before?

A. No. [120]

* * *

Q. As President of this organization which was established [121] in the Spring of 1949 you had certain duties, didn't you? A. I did.

Q. You conducted meetings? A. I did.

Q. You had a union constitution and bylaws drafted, and that sort of thing, didn't you?

A. That's right.

(Testimony of Clyde W. Scheuermann.)

Q. You conducted an organizing campaign, did you not? A. I did.

Q. You conducted a campaign for the purpose of having that organization elected as the representative of the workers in the plant, didn't you?

A. That's right.

Q. You took a leave of absence to conduct those affairs, didn't you?

A. The first thought of taking a leave of absence was not for that purpose. It later developed that was what happened, yes.

Q. You say you didn't take the leave for that purpose?

A. No, sir. I took two weeks' vacation and then requested a leave because the boys had asked me to—they thought I could do more for them on the outside than I could on the inside, and my desire to leave the shop was because it was becoming untenable to work without causing a slow-down of the work, and I was more afraid of getting some of my friends put on the spot [122] because they naturally stopped their work and talked to me, and it made it rather difficult.

Q. Well, there had been some campaign, some organizing carried on by yourself, as a matter of fact, before you went on a leave of absence, isn't that right? A. Naturally that happened.

Q. For about how long did you act as President of this union? A. Through its duration.

(Testimony of Clyde W. Scheuermann.)

Q. Well, what was that—three or four months, of five months? A. I haven't those dates.

Q. Well, the election was—the result of the election was announced in, I think—or, on the 19th of July, I think. That date has been identified in this record.

Your organization was established in March, in February or March, wasn't it?

A. Just prior to—

Q. About the time of the representation hearing, wasn't it? A. Yes.

Q. In February, then? A. Yes.

Q. You were active then as President of this union from February to July, weren't you?

A. That's right. [123]

Q. You were carrying on these various activities that you have spoken of, directing the organizing, and the campaign for the election and all that sort of thing, isn't that right? A. That's right.

Q. And you had something to do with the drafting of the constitution and bylaws of that organization, didn't you? A. Yes.

Q. And you conducted meetings? A. Yes.

Q. Did you appoint committees to carry on various activities?

A. Yes—I didn't appoint any committees, no.

Q. Well, did you direct the activities of organizers?

A. Our Executive Board handled the part of the committees, committee for a dance and so forth.

(Testimony of Clyde W. Scheuermann.)

Q. Well, you were a member of the Board, weren't you? A. Yes, I was.

Q. As a matter of fact, you acted as chairman of the Board? A. Whenever I was present.

Q. Whenever you were present? A. Yes.

Q. That was part of your job as President of this organization? A. That's right.

Q. Your organization, in its Board meetings, or in its membership meetings—did it ever get to the point that you [124] drafted the contract proposals or considered what you would propose to the company if you were elected as the representative?

A. They began having discussions, yes. They never got beyond the discussions.

Q. But you did discuss the possibility of a contract proposal? A. Yes.

Q. And among other things you discussed the possibility of asking for a union shop, didn't you?

A. I don't recall that that came up, no.

Q. Did you discuss the possibility of requiring union membership as the other contracts had required in the plant?

A. No, I don't recall—no, nothing to that effect.

Q. You don't recall that in your discussions?

A. That's right.

Q. Did you have other contracts there that you considered in these discussions to guide you in the proposals that you might request or demand?

A. The committee elected to appoint—I wasn't a part of that committee and never met with them,

(Testimony of Clyde W. Scheuermann.)

but they were trying to gather some data on contracts. I know that.

Q. I see. And they had the National I.B.E.W. contract with the Westinghouse organization, didn't they?

A. I don't recall actually seeing any of the contracts. [125] I know they requested that I locate some and at the time the election came up, why, we really hadn't gotten into it. I know I hadn't turned over anything to them.

Q. Had you gotten any contracts together?

A. None that I saw. Now, they possibly had some.

Q. Did you ever get the National contract that U.E. has with Westinghouse, among others?

A. Now, that is one they requested me to get, but I hadn't—the election came up too soon and I hadn't even been able to acquire that.

Q. After the representation election, when did you go back to work?

A. The election was the 7th—what day was that? Was that a Friday? What day was the election? What was the 7th? Anybody have a calendar?

Q. The 7th of July was the date of the election?

A. Yes. I believe the closest Monday.

Q. Somebody is trying to produce a calendar. Just a minute.

Mr. Bamford: The 7th was a Thursday.

The Witness: Then I returned to work on Monday, the following Monday.

Q. (By Mr. Holmes): You returned the fol-

(Testimony of Clyde W. Scheuermann.)

lowing Monday, is that right? A. Yes.

Q. Did your organization disband then?

A. Yes. [126]

* * *

Q. Did you ever call up Mr. Gorham and ask him about it? A. No.

Q. Did you ever call up Mr. Scott? A. No.

Q. Did you ever talk to any supervisor about it?

A. No.

Q. Did you ever make any attempt at all to find out about it? A. No.

Trial Examiner Parkes: Did you ever see a copy of the contract posted on the Bulletin Board?

The Witness: No.

Q. (By Mr. Holmes): Did you ever see a contract posted on the Bulletin Board all the time you were at the plant?

A. I think we had at times, yes.

Q. When—before Westinghouse took over?

A. Possibly, yes. I know we had quite a number of items posted from time to time, but they never had a very good posting system there and the company directives—I can remember the Fair Wage Act being posted on the wall. That was one in particular.

Q. Do you mean the Fair Labor Standards Act?

A. Yes.

Q. That was posted years before wasn't it?

A. That is right.

Q. Did you ever see a contract posted on the

(Testimony of Clyde W. Scheuermann.)

Bulletin Board [151] while Westinghouse had the plant? A. Not that I recall, no.

* * *

Q. While you were at this plant did you ever know of any individual who had been discharged for failure to pay union dues?

A. No, I don't think I did.

Q. I understood you to testify the other day that on the 11th of November you received a telephone call, was it, or just a notice from somebody to go to Mr. McAuliffe's office?

A. As I walked in the plant between 4:00 and 4:30, I was met in the aisle by the day foreman.

Q. Who was that? A. Semondi.

Q. What did he tell you?

A. He said, "Mr. McAuliffe wants to see you in the office," and with that he led the way to the office.

Q. Did he stay there? A. No.

Q. Mr. McAuliffe was there alone? [152]

A. Yes, alone.

Q. Was his stenographer there?

A. Yes, she was in the adjoining—I don't know, an adjoining room there.

Q. Was this about 4:30? A. Yes.

Q. What did Mr. McAuliffe say when you came in?

A. He offered me a chair, said, "Clyde, I have a letter here from the union. I will read it to you and then I will let you read it," and he read it to me; then he handed it to me and I read it. And I

(Testimony of Clyde W. Scheuermann.)

waited for a second or so, then he said, "I have the then he handed it to me and I read it. And I agreement here, that section that it refers to." He said, "I will read that to you and let you read it," so he read the agreement.

Q. Didn't you ask him for a copy of it, of the letter?

A. Not at that time. That was an after thought.

Q. After a few minutes?

A. No, after we'd parted, why I went in to get my termination slip with the girl and as I walked out, he was coming back in again and I asked him if I might have a copy of it.

Q. What did he tell you?

A. He said, "Well, this is the only one I have. I don't like to give it up, but you can sit down and take notes of it." He gave me his pen and sat me down at a table with the letter to take notes of it. [153]

Q. Had his stenographer gone at that time?

A. I don't know if she was there or not.

Q. He told you you could make notes of it?

A. Yes.

Q. And did you?

A. Yes, I believe I copied it.

Q. You copied the whole thing?

A. Word for word. It was a short letter.

Q. After you looked at this agreement—you did look at the agreement when he handed it to you?

A. Yes.

(Testimony of Clyde W. Scheuermann.)

Q. What did you say?

A. I said, "Yes, but I don't think this applies to me."

Q. Why did you say that?

A. Well, I said, "Because I feel mine is a special case."

Q. Well, had you offered the union your initiation fees and dues? A. No, I had not.

Q. Did you tell him why you thought yours was a special case?

A. Yes, I did. I said, "You know of the election and the fact that I was fined and expelled," so I felt I had no way of being able to comply with it.

Q. What did he say?

A. He said, "You are referring to this thing here, aren't you?" He pointed it out, and I said, "I think so." I couldn't see it [154] across the table, and I took it from him again and reread it and I said, "Yes, that is what I base my assertion on, equal rights."

Q. Equal rights? What did you mean by that?

A. Well, that part of that that says everyone shall have an equal chance to comply.

Q. The same opportunity?

A. That's right, without discrimination. Well, I don't know if it says reasons, for other reasons, for non-payment of dues, or what.

Q. It said something about the same opportunity to join the union as everybody else, or words to that effect? A. That's right.

Q. Something like that? A. Yes.

(Testimony of Clyde W. Scheuermann.)

Q. What did he say?

A. He said, "I don't think they can make it stick, do you?" I said, "No."

Q. He said that?

A. He said that, yes. And I said, "No, I don't."

Q. Then what happened?

A. Then there wasn't anything said for a minute, and then I said, "There wasn't anything wrong with my work, was there," or if he had any report about me causing any trouble or fellows not cooperating with me in any way, and he said, "No, Clyde, [155] you are a good man." I think he repeated that about five times. I don't know whether he was trying to make me feel good or whether he really meant it. So after that we sat quietly for awhile and I said, "Well, what do you want me to do?" He said, "Well, all I can do is ask you to check out." So he asked me if I would try to that night. I said, "Yes." When I got up to leave, I said, "This thing smells to me." I said, "I hope," I said, "I have a good opinion of you. I hope you had no part in it." He just smiled at me and that was the end of our conversation.

Q. Except that you came back to make a copy of the letter, is that right? A. Yes. [156]

* * *

Q. Then you went to the plant again?

A. Yes. I seen Mr. Cassady. Edises was back in the Supreme Court at the time. I couldn't get in touch with him, so I went to find out what the law

(Testimony of Clyde W. Scheuermann.)

said, get a copy of it, and find out just where I stood in the matter, and the only place I could think of to go was there, so I discussed it with him. He told me—I told him what I knew of the facts of it, and he said, “It appears to me that there must be some misunderstanding.” I believe he said, “Why don’t you go back and talk to Mr. [157] Goodenough and see if there hasn’t been something overlooked.”

Q. Didn’t he tell you to see Mr. Gorham?

A. No. I said, “Do you suppose it would do any good if I go to see Mr. Gorham and offer to pay? If that is what I am supposed to do, that is what I want.”

He said, “Yes, that will be all right.”

And so I said, “I suppose I should go and see Mr. Gorham first and then go to the company,” and he said, “Yes, I think that is wise.”

As I left, why, he said, “If you want, you can tell him that you talked to me and I suggested this to you, to try and——”

Q. All right. Then you went back to the plant next, didn’t you?

A. I think I went to see Scott first.

* * *

Q. Now, when you came back to Westinghouse you saw Mr. Goodenough the first time, didn’t you?

A. Yes. [158]

* * *

(Testimony of Clyde W. Scheuermann.)

Q. Did you tell him you had been to see Mr. Scott? A. Yes.

Q. What else did you tell him?

A. I told him I had an appointment with Gorham for the next day, that I couldn't mistake because he asked me if I would mind returning the next day and let him know what Frank said.

Q. Frank Gorham, you mean?

A. That's right.

Q. All right. What else did you tell Mr. Goodenough?

A. We talked about the same thing that I talked to Mr. McAuliffe about. I asked him if he had had any word about my work, that it wasn't satisfactory, and he assured me that it must have been because they didn't have a habit of keeping people that didn't—

Q. Did you tell Mr. Goodenough that you had been expelled from the I.A.M. and had been fined?

A. Yes.

Q. In this conversation you told him that?

A. Yes. It was either that one or the second conversation.

Q. One or the other?

A. One or the other, yes. [159]

* * *

Q. And are you referring now to General Counsel's Exhibit No. 4? (Handing document to witness.) A. Yes.

Q. Isn't it a fact that you received an earlier notice telling you of the Lodge's action?

(Testimony of Clyde W. Scheuermann.)

A. I had a notification of the trial. I don't recall that I had another letter.

Mr. McGraw: I would like to ask if I can refresh this witness' memory, if you please.

Would you care to see it first?

Trial Examiner Parkes: No. Go ahead.

Q. (By Mr. McGraw): I show you what purports to be a copy of a letter sent to you, Mr. Scheuermann, and ask you if that would refresh your memory?

A. Yes, I recall that I did receive it.

Q. You received such a letter?

A. Yes, I recall it.

Q. And the date of this letter appears to be March the 22nd. Would you say you received that within a few days after that?

A. Yes, I recall more now since I read the last line, where it was being submitted, and I didn't take much cognizance of it until the final O.K. came from the International.

Q. Now, after you had received notice of the Lodge's action [167] did you file any appeal with the Lodge or with the International? A. No.

Mr. Bamford: Objection, irrelevancy.

Mr. McGraw: I suppose you are waiting for me?

Trial Examiner Parkes: No. I assume that the question relates to the contents of that letter, does it not, an appeal being filed from the action of the Local? I haven't seen the copy of the letter.

Mr. McGraw: Oh, I am sorry.

(Handing document to Trial Examiner.)

(Testimony of Clyde W. Scheuermann.)

Trial Examiner Parkes: The objection is overruled.

Mr. McGraw: And did you answer that question?

Mr. Bamford: Yes, he answered the question.

Q. (By Mr. McGraw): And in fact, Mr. Witness, you did nothing concerning your trial and expulsion until you were removed from the job at Westinghouse?

A. The only thing I did was continue to pay dues, as I always had.

Q. And how long did you continue to pay those dues?

A. I continued until they were—well, there were three months' returned to me.

Q. Well, isn't it a fact that you were always on the verge of being dropped for non-payment of dues? A. No.

Mr. Bamford: Just a minute, just a minute. I am once again [168] going to object to the relevancy of this line of questioning. Perhaps I should have made it clear, I didn't object earlier to this line because I thought it bore upon the witness' credibility. Since the witness has admitted he had received this letter which has been shown to him, it seems to me the issue stops there, once he admitted the fact that he was expelled from the union.

It seems to me anything further is irrelevant.

Mr. McGraw: Well, Mr. Trial Examiner, I objected, of course, to quite a few things that have already been admitted. I thought they were irrel-

(Testimony of Clyde W. Scheuermann.)

evant and immaterial. However, since they were admitted, I think very definitely some issues are posed here which go to the very crux of this entire matter.

Trial Examiner Parkes: Well, gentlemen, I don't see that the fact that he may have had a little difficulty in paying dues or being in arrears in dues at times has any bearing on the matter now, just as I see no reason for us to go into the reason that he was expelled from the union. We can assume that—Let us assume that he has violated the constitution of the union, possibly, he had or hadn't. I don't know. That really doesn't concern us, the reason for his expulsion.

I think counsel for the Board has made a point, that as far as the Act is concerned the Act talks in terms of being expelled from membership or being deprived of membership. We have had some testimony on the reasons and the background for [169] his expulsion.

However, I don't think those reasons are material herein and I shall sustain the objection.

Mr. McGraw: Well, perhaps I don't understand the full implication of your ruling, Mr. Trial Examiner. General Counsel elected, I think, to show that he was expelled because of a grudge and that it was useless for him to apply for readmission.

I think if there is any further merit to those contentions at all here, that certainly the demonstration of his failure to comply with our laws and his failure to exercise the privileges and the opportuni-

(Testimony of Clyde W. Scheuermann.)

ties afforded by those laws certainly makes him partly responsible for the predicament that he finds himself in now.

Trial Examiner Parkes: Well, let me ask counsel in that regard, are you relying upon his history of leadership in the opposing union and the fact that led to his expulsion as part of your grounds of argument, that it was useless for him to attempt to seek membership in the union after the contract was negotiated?

Mr. McGraw: We don't say that it was useless for him to apply. We won't admit that.

Trial Examiner Parkes: I am asking the General Counsel.

Mr. McGraw: Oh, I am sorry.

Trial Examiner Parkes: If that is his [170] position.

Mr. Bamford: Well, it is one of several positions taken, one of several alternative positions taken by the General Counsel. My objection to the last question that was asked by Respondent Union's Counsel was that matters relating to tardiness in paying dues prior to the time of his expulsion would be irrelevant here, in view of the fact that he was fined \$500 and expelled from the union—whether the fine of \$500 had been placed for non-payment of dues or whether it had been placed for dual unionism is probably irrelevant, if, in fact, after the fine had been placed upon the individual, that it was then made clear to him by the union that he could not be reinstated into the union or pay dues or pay

(Testimony of Clyde W. Scheuermann.)

initiation fees or in any way have anything to do with the union until the fine had been paid.

Now, I think, simply for the purposes of background, that it is interesting to the Board and to the Trial Examiner to know why he was expelled, which was for dual unionism rather than for tardy payment of dues, but it seems to me the crucial issue here is the fine, and what the fine was levied for is probably irrelevant, but attempts to go beyond the fine, go back of the fine, it seems to me, are certainly irrelevant.

Trial Examiner Parkes: Well, I just wanted your position. If you are going to rely upon any of the background material, then I certainly don't want to foreclose counsel from going into his side of the story. [171]

However, it was my impression that your theory was that he was expelled——

Mr. Bamford: And fined.

Trial Examiner Parkes: And fined, then. The reasons for it are of no particular concern to us.

Mr. Bamford: Yes, that is correct.

Trial Examiner Parkes: Again, as I say, the only conceivable reason you might rely upon it would be as an excuse for his failure to seek membership in the union after the union shop contract was negotiated, and on that I wanted to be clear.

Mr. Bamford: No, I am suggesting that with respect to any possible duty he might have had to tender dues and initiation fees, that the union by its conduct had made it clear to him and to Ollis

(Testimony of Clyde W. Scheuermann.)

that such a tender would be a useless or idle act, and that was certainly corroborated, I think, by the witness' testimony when he went to see Gorham and went to see Scott, the head business agent.

Trial Examiner Parkes: So that I may be clear on your position, you are relying upon events subsequent to the expulsion and fine?

Mr. Bamford: That is correct.

Trial Examiner Parkes: By the union?

Mr. Bamford: Yes.

Mr. Holmes: You are relying on events subsequent to his termination, then, is that it, if I understand your statement [172] correctly; is that right?

Mr. Bamford: Well, I don't think it is your place to ask me any questions.

Trial Examiner Parkes: I was directing attention back to the time of the fine.

Mr. Holmes: I shall ask the question of the Trial Examiner, then, if he would care to ask it of you. It seems to me I objected to a lot of this material on the General Counsel's direct case because it seemed remote in time and irrelevant and immaterial for that reason.

Now, you are questioning him concerning that, I suppose, to try to determine the relevancy of material that has already gone in?

Trial Examiner Parkes: Well, my purpose is—I want to determine the issues as narrow as possible. There are some legal problems involved on which undoubtedly he will argue one point and you will argue another. I am assuming that in advance here

(Testimony of Clyde W. Scheuermann.)

—One can readily see that from the facts of the situation here—and your question was whether he was relying upon events occurring subsequent to the termination. I assume Mr. Scheuermann's call on the union——

Mr. Holmes: On Gorham and Scott, that Mr. Bamford referred to.

Trial Examiner Parkes: I assume that he is relying upon them, but as to the legal conclusions that may be drawn from [173] those events, that is another question.

Well, in view of our questions and answers and statements of position taken, suppose we continue with the examination and you pose another question here. I think we have lost sight of the original question.

Q. (By Mr. McGraw): Mr. Scheuermann, when was the first time after you were expelled that you made application to Lodge 504 for reinstatement?

A. That was on the Monday following—Friday, I was discharged on Friday. It was the following Monday, or the following Tuesday. I don't know if there was a day skipped or not.

Q. That was the first time you contacted members of the union with regard to reinstatement?

A. That's right.

Q. And I believe you testified you contacted Mr. Scott?

A. First, yes.

Q. What time of the day was that?

A. It was in the afternoon of Monday.

(Testimony of Clyde W. Scheuermann.)

Q. And approximately what time?

A. I don't recall the time. I don't recall the exact time, it was in the afternoon.

Q. Did you have to wait to see Mr. Scott?

A. Well, I asked the girl at the desk for an application blank first, and it took a little while to fill them out, and she stapled them and then she went to the files and found out what the case [174] was, and she went to Mr. Scott.

Q. And that was an application for membership?

A. Yes. I requested—as near as I know, I told her I worked at Westinghouse and wanted the application for union membership there, and whatever she gave me—I didn't read the heading of it. I don't know whether it was an application to re-join or an application for union shop, because I didn't read the heading of it.

Q. And I believed you already testified that she tore that up later on?

A. Yes, she just wadded them up and threw them in the waste paper basket and sent me in to Mr. Scott.

Q. Tell us again, if you please, just what you said to Mr. Scott and what he said to you.

A. All right. I told him I was out to try to straighten out, see what we could do about my being laid off at Westinghouse, and he said, "Well, yes, Clyde—" said this in a very friendly manner. He said, "Yes, Clyde, I think we can do something. You pay your back dues and your new initi-

(Testimony of Clyde W. Scheuermann.)

ation fee and the \$500 fine—" he added that, and I kind of smiled at that, and I said, "Oh, yeah?"

I didn't even express it beyond that point and he said, "Well, I will tell you, Clyde, I don't know anything about the case. I haven't been following it. Frank has been handling that." [175]

And he said, "I will make an appointment with him," and I said, "Well, all right." And I said "Whatever time you say will be all right," so he made it for ten o'clock the next morning. [176]

* * *

Q. You knew for a fact, didn't you, that you were required to submit any fine along with the reinstatement fee before the Lodge could reconsider your application?

A. No. No, I merely thought that I could have complied under the law as it stands. At that time I didn't even know you had to submit a new initiation fee.

* * *

Q. Now, I believe you came back and you saw Mr. Gorham the next day? A. That's right.

Q. What time of day did you see him?

A. Ten o'clock in the morning, I think, was the time for the appointment—rather close.

Q. What did you say and what did he say?

A. He came out to the desk to meet me and I said, "Frank, I came to see you about an application or doing whatever I have to do to join—fix me up at Westinghouse."

(Testimony of Clyde W. Scheuermann.)

He said, "Clyde, you haven't even got a job."

He said, "I can't do that, you haven't got a job."

Well, that showed me right then there was no use, there couldn't be any negotiation or anything. I said, "Is that your answer?"

He said, "Yes," and so I walked out; that is all. [177]

Q. Now, after the conversation with Mr. Scott and Mr. Gorham that you have just related, did you appeal to the Grand Lodge of the International Association of Machinists on the basis that you were being discriminated against? A. No.

Mr. Bamford: Objection, irrelevancy.

Trial Examiner Parkes: Well, I take it you are relying upon his visits to the offices of the Local Union after his discharge, since you adduced that testimony from the witness.

I believe he has already answered. The answer may stand.

Q. (By Mr. McGraw): Did you ever write to the Lodge or direct any communications through the Lodge asking them to consider your particular case in view of the fact that you had been, shall we say, discouraged by Mr. Scott and Mr. Gorham?

A. No.

Q. Now, from the time that the union shop election was conducted until the time of your discharge, did you visit the union office and offer to pay your dues? A. No.

Q. And the only offer in that respect that you have any knowledge of is this particular occasion

(Testimony of Clyde W. Scheuermann.)

in the locker room in which some kind of an offer was made to Smiley, is that correct?

A. That's right.

Q. And did you offer Smiley any particular amount of money on that occasion? [178]

A. No, I did not. He had refused me before and I felt that if Les could pay his, then certainly he would take mine. It was just merely left that way in my mind; if he accepted Les, then, why, he would have to accept mine, because I had known him a hell of a lot longer and certainly if he did him a favor in that respect he would no doubt take my dues too.

Q. Had anyone ever identified Smiley as an officer of the union?

A. Oh, I paid dues to him for months. I had a dues book and his signature——

Q. The fact of the matter is, he acted as an errand boy between you and the union office, didn't he, for several years?

A. That is right. Well, I wouldn't say several years, no. The other boy got into trouble, Bill Robert. Bill Robert was the boy that used to take them and after his difficulties, why, then Smiley took care of the dues.

Q. Who was the steward on nights?

A. We had no steward at nights except in the machine shop. Nunez, whenever he was on nights, why, he would be there—he worked nights and days. I never did contact him. I never knew whether he

(Testimony of Clyde W. Scheuermann.)

was working or not. The only time I knew Nunez was when Smiley refused me. I offered him dues the last time and that would be the time that I have a record of, and Elmer said, "I can't take dues from you. I have been told not to." [179]

So, as you say, I was always pretty close to the deadline and I have a very good reason for that too. I almost got my pants thrown out on it one time for being delinquent, because they don't send notices until you are almost to the end of your three-month period. You are granted three months' grace and then I would only pay \$2.00, so then the very next month I would get another notice.

At one time I went nine months behind, when I belonged to Lodge 68, and that was during the war, when I was too damned busy to bother about union dues; when a good friend of mine died in the shop and I was trying to locate his book so I could fix up his benefits, I began looking up my own book and I began to get worried about it. I gave it to the shop steward in the shop and he took it with him, and I shouldn't have worried at all because when the book was returned there was a letter of apology from Mr. Howard saying during the war they were behind in their own work and they knew we were behind in our work, and it is perfectly all right; so then I got in the habit of paying just two months because if I paid three months I would be delinquent before I had paid another, so I just paid two months and that kept me in good standing.

(Testimony of Clyde W. Scheuermann.)

I think that answers your previous question. I did pay dues to Nunez because that is the only one in my record I have—that I paid to Nunez, because Smiley refused to accept them. I said to Nunez, “I don’t want to put you on the spot. [180] Smiley refused to take them.”

Nunez said, “Nobody told me not to take them.” He said, “There is only one in my book, that is one for January,” so he wrote on it “for January.”

After that, without embarrassing anybody in the shop I paid them into the office.

Q. Now, isn’t it a fact that each year when a new contract was arrived at, that it was customary for the union to send a notice to all of its members advising them of a special meeting to be held to consider the contract?

A. I believe it was customary. Ordinarily we all of us didn’t get them, but there would be enough of them sent out that word would get around, yes.

Q. Isn’t it a fact that some of your friends were union members in the Summer and Fall of 1949 and informed you of this special meeting that was held to consider the agreement that had been negotiated between Westinghouse and the I.A.M.?

A. No, I don’t recall any special notice, that anybody went out of their way particularly to let me know.

Q. Well, isn’t it a fact that in the normal course of conversation that came up and was discussed and you knew about it?

(Testimony of Clyde W. Scheuermann.)

A. What contract are you talking about, what year?

Q. I am talking about the present contract.

A. The one in effect now? [181]

Q. Yes.

A. No, I can truthfully say that all I knew about that contract was the rumor about the 2 per cent; that seemed to be the only part that was discussed in the shop.

Q. Then, is it fair to say, Mr. Witness, that you have no knowledge, that you never heard of a special meeting that was held on a Sunday so that all the night shift as well as the day shift employees could come and discuss the contract? A. No.

Mr. Bamford: That is in this year?

Mr. McGraw: 1949.

The Witness: I knew they had the meeting, yes. I didn't say that I didn't.

Q. (By Mr. McGraw): And isn't it a fact that you inquired of some of those that you worked around, that is, as to what had happened at that particular meeting?

A. I believe not. I don't recall there was any talk.

Mr. McGraw: Now, Mr. Trial Examiner, I think this is the proper time, in view of the other evidence that has been introduced, to make a motion to dismiss.

Mr. Bamford: Certainly—for one thing, there is further cross-examination, there is redirect exam-

(Testimony of Clyde W. Scheuermann.)

ination on Ollis and Scheuermann and the General Counsel hasn't rested. Perhaps you had better wait until that time.

Trial Examiner Parkes: I think we had better wait until [182] the General Counsel has rested its case in chief before you make your motion.

Mr. McGraw: I will wait, then, but it is quite clear there is nothing that could be adduced now that would alter the justification for [183] dismissal.

* * *

B. H. GOODENOUGH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bamford: [190]

* * *

Q. What is your occupation?

A. Manager of Industrial Relations, Westinghouse Electric Corporation, Pacific Coast Manufacturing and Retail District.

Q. And where do you maintain your principal offices?

A. The Westinghouse Plant at Sunnyvale.

Q. What are your duties as Industrial Relations Manager?

A. Well, the management of all personnel, in-

(Testimony of B. H. Goodenough.)

dustrial relations, and labor relations activities for the Pacific Coast District, which includes the hiring of employees, interviewing, the collective bargaining with the various certified bargaining units, responsibility for the Medical Department, the safety activities, group life insurance, annuity plans, a suggestion system—is that broad enough a description?

Q. Would it be within the province of your duties to act upon a request such as contained in General Counsel's Exhibit 6, a letter addressed to you?

A. All such correspondence from the various unions is directed to me.

Q. And would you act upon such correspondence? A. I would.

Q. And you had authority to act?

A. I have. [191]

* * *

FRANKLIN W. GORHAM

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bamford:

* * *

Q. What is your occupation, Mr. Gorham?

A. I am Assistant Business Agent of District

(Testimony of Franklin W. Gorham.)

Lodge 93 of the International Association of Machinists.

Q. Does District Lodge 93 bear any relationship to Local Lodge 504?

A. Lodge 504 is one of the Locals belonging to the District.

Q. Will you describe the relationship between the District and the Locals?

A. Well, for practical purposes the District maintains the Business Office and Business Agents for the various Locals belonging to the District, as provided under the Constitution of the International Association of Machinists.

Q. So that would you then occupy the position of Assistant [192] Business Agent for Local 504 as well as District Lodge 93?

A. I believe that might be right, yes.

Q. Now, what are your duties as Assistant Business Agent?

A. The negotiation and policing of contracts, in machine shops primarily, manufacturing plants.

Q. Are you appointed or elected?

A. Well, I am appointed subject to the confirmation by the membership of the Locals belonging to the District.

Q. How long have you been in this position?

A. Well, the District was formed in 1942. I have been the Assistant Business Agent of the District since that time. Prior to that time I was also an official.

(Testimony of Franklin W. Gorham.)

Q. And during all that time has Local 504 been in existence?

A. Local 504 has been in existence since 1902.

Q. When did it become an affiliate of District Lodge 93?

A. When the District was formed, in 1942.

Q. And it has remained in the District since that date, is that correct? A. It has.

Q. Who is Mr. Scott?

A. Mr. Scott is the Senior Business Agent of District 93. [193]

* * *

Q. Does the I.A.M. have stewards?

A. Yes.

Q. Has Mr. Smiley ever been a steward?

A. Yes, he has.

Q. For what period of time, if you know?

A. Oh, I would say approximately from 1946 to the present time.

Q. And what are the duties of an I.A.M. [194] steward?

A. The principal duties of the steward are to process grievances.

Q. Do they also collect dues?

A. They do in some cases, yes.

Q. And then transmit those dues to the head office, is that correct? A. That's right.

* * *

Q. But their duties remain the same, regardless of the method of their selection, is that correct?

(Testimony of Franklin W. Gorham.)

A. That's right.

Mr. Bamford: No further questions.

Trial Examiner Parkes: Mr. McGraw?

Cross-Examination

By Mr. McGraw:

Q. Do the stewards collect initiation fees?

A. Yes, they do. They collect payments on initiation fees as a convenience to the member or the respective members.

Q. Do they solicit new members?

A. Occasionally; prior to the Taft-Hartley law they didn't.

Mr. Holmes: What does that mean?

Q. (By Mr. McGraw): Does the steward issue any dues stamps or place any marks in the member's book? [195]

A. No, he does not.

Q. Does he do anything other than issue a receipt and transmit the money to the union office for proper accounting?

A. No.

Q. Do you have authority to admit or deny membership to any applicant?

A. No.

Q. Does Mr. Scott have any such authority?

A. No.

Q. Does any steward have that authority?

A. No.

Q. In fact, it requires action of the Lodge in each individual case, doesn't it?

A. That is right. [196]

LESLIE E. HOLLIS

resumed the stand, was examined and testified further as follows:

Cross-Examination
(Continued)

Mr. McGraw: In view of some of our discussion this afternoon and the rulings made by the Trial Examiner, I won't take nearly as long as I had anticipated when we adjourned two days ago.

By Mr. McGraw:

Q. Mr. Ollis, shortly after you were notified about your trial were you notified of the action of the Lodge with regard to your trial?

A. I received a registered letter notifying me of the results of the trial by Local 504 and considerable later I received a verification, or whatever it is called, from the International Machinists. [197]

Q. Between that time that you were notified of the action of the Lodge and the time of your discharge, did you file any appeal with the Grand Lodge or with the Local Lodge concerning their action in expelling you?

A. Only to ask the trial be delayed because it was held on swing shift, when I worked.

Q. But you made no appeal from the verdict or decision of the Lodge?

A. No, I made no appeal from the verdict.

Q. Now, during that same length of time, from the time that you were notified that you were expelled until you ceased to work for Westinghouse,

(Testimony of Leslie E. Hollis.)

did you make an application to the Lodge for reinstatement?

A. Unless you consider offering dues an application, I did not.

Q. Now, if I understood your testimony several days ago, you testified that they had advised you that you better see Gorham.

Can you tell us who "they" were?

A. I believe that Emil—you repeated his name many times here——

Mr. Holmes: Tonascia.

The Witness: Tonascia. I believe he advised me of that and in a talk one evening after work in the locker room; possibly others, too.

Q. (By Mr. McGraw): Now, as a result of those suggestions that [198] you had better see Gorham, did you ever go to See Mr. Gorham prior to the time that your employment was terminated?

A. I saw him only once in the shop. I never went to see him, and at that time I didn't talk with him.

Q. Did you ever visit the union office for the purpose of speaking to anyone concerning reinstatement?

A. Well, I visited the union office at that meeting, which was one of the causes of my being kicked out, but I believe the trial was later—I am quite sure the trial was later, because that was the basis of some of the charges.

Q. Then, if I understand your testimony correctly, after your trial, and you were notified that you were no longer a member, you did not go to

(Testimony of Leslie E. Hollis.)

the union office and apply for reinstatement or talk to any representative of the union at the union office?

A. I talked only to representatives of the union at work.

Q. Do you know who the night steward was?

A. Yes. I think I do. I am not sure he was on all of that period, but part of that period he was. What the hell was his name—Well, you obviously know what it is.

Q. I am asking you.

A. I know, but I know the fellow—he had a couple of gold teeth in front and I do know his name, but I can't think of it right now.

Mr. Bamford: Perhaps counsel can refresh his recollection.

Q. (By Mr. McGraw): Do you know what position Nunez has? [199]

A. Nunez is the man I am referring to.

Q. And did you ever make an application to him for reinstatement or did you ever ask him for an application blank for reinstatement?

A. No, I talked very—only a few times with Nunez, and perhaps that was even before the election. I believe it was. He didn't work near me, as I have told you before.

Q. How long did you work at Westinghouse?

A. Approximately two and a half years.

Q. During that time did you attend any special meetings called to consider acting on a contract between the company and the union?

A. I believe I attended nine out of ten of all

(Testimony of Leslie E. Hollis.)

meetings, whether they were regular or special, prior to the time I was put on swing shift.

Q. Now, you know for a fact, don't you, that it was customary to notify all the union members of special meetings in order to consider whether or not they would accept or reject a proposed contract?

A. That was one reason for notifying them; the other one was the attendance was barely sufficient to be able to decide anything.

Q. And you know that just shortly before your termination, that a special meeting was held for the purpose of acting on either accepting or rejecting the contract? [200]

A. No, I am not sure that I do. I don't believe that I did know of it. I know of it now. Conceivably I could have known of the union meeting—

Q. Well, isn't it a fact that some of those men who were riding to work with you told you that they had received such a notice?

A. No, not to my knowledge. I heard no one of that group, and I believe of any other group, tell me that they had received such a notice. I certainly never saw a printed notice posted.

Mr. McGraw: That is all.

Trial Examiner Parkes: Mr. Bamford, do you have anything on redirect?

(Testimony of Leslie E. Hollis.)

Redirect Examination

By Mr. Bamford:

Q. Now, I believe you related on cross-examination that you specifically recalled two attempts to pay dues to Smiley prior to this last principal attempt that you testified to, isn't that correct?

Mr. Holmes: What do you mean by "principal attempt"? I think that is a characterization that should be stricken from the record.

Mr. Bamford: It may be stricken, the word "principal" may be stricken.

Q. (By Mr. Bamford): Do you understand the question?

A. I believe I do. The last time I paid dues to Smiley was just prior to my being laid off and before that I originally [201] testified that several times I had offered to pay dues, and that must have been at least two or possibly three or even four times that I talked to Smiley—several times, certainly.

Q. Did you relate these incidents to Clyde Scheuermann? A. Certainly I did.

Mr. Bamford: No further questions.

Recross-Examination

By Mr. Holmes: [202]

* * *

Q. Never later?

A. Sometimes later. The time mentioned when I talked to Smiley in the locker room being one of the examples of the times I started to work later.

(Testimony of Leslie E. Hollis.)

Q. Did you start to work late that day?

A. Evidently.

Q. Do you know?

A. I talked to Smiley and he was getting off shift—Either he came off early, and knowing both him and myself, I think it is more likely he worked until 4:30 and I didn't start promptly at 4:30.

Mr. Holmes: That is all.

Trial Examiner Parkes: Anything else?

The Witness: I have one thing—I don't know. I swore to tell the truth, the whole truth and nothing but the truth. Now, it seems to me that it isn't quite the whole truth. There are other things I have to say.

Trial Examiner Parkes: Well, unless——

The Witness: Am I permitted to say them, or——

Trial Examiner Parkes: Unless you want to change your testimony.

The Witness: No, I don't want to change any of the testimony.

Trial Examiner Parkes: Well, I think then that we wouldn't be interested in anything else. You undoubtedly have [203] been interviewed by Mr. Bamford before he put you on the stand; at least, I assume all counsel interview friendly witnesses. Otherwise, it is largely a waste of the Trial Examiner's time and also the time of other counsel. [204]

Trial Examiner Parkes: Mr. McGraw, do you have anything additional?

Mr. McGraw: Yes, sir. Respondent union, of course, joins and underlines the statement of Respondent company. In addition to that, we would like to point out that no copy of the Charge has been filed on Respondents, as required by law and that at the present time we have in effect a proposal to amend a Complaint that is totally unsupported by a charge. Without repeating some of the things that the Counsel for Respondent Company said, I would like to point out that to permit an amendment under these circumstances and on this set of facts is to, frankly, open the door and to provide General Counsel with an opportunity for unending harassment of the [229] Respondent company and the Respondent union and to take away the protection of the law, the protection the law has specifically granted, by making and establishing a time limit in which a charge could be filed. Even without this amendment, it is the position of Respondent union that General Counsel is trying to distort, circumvent, pervert and subvert the meaning of the Act, and if anything tends to prove that this effort on the part of the General Counsel to amend the Complaint at this time can have no other meaning. Certainly, it is improper and we think that it is illegal and we think that because of the express provisions of the law that the Trial Examiner has no authority to grant such an amendment at this time under this set of facts.

Trial Examiner Parkes: Mr. Bamford, would you like to be heard?

Mr. Bamford: If you please, Mr. Examiner.

Starting with the last first, I should like to state in answer to Mr. McGraw's accusation that General Counsel is attempting to pervert and subvert the purposes of the Act, only this: the matters contained in Mrs. Andersen's testimony yesterday, and which have been pleaded in the amendments to the Complaint filed this morning first came before the attention of the National Labor Relations Board yesterday morning at 10:00 o'clock. I had never heard the name John Marovich before. I never heard the name of Mrs. Chloe Andersen before, and I knew [230] nothing of the new allegations of the Complaint. Mrs. Andersen's possible testimony, as I say, came before me yesterday morning. I saw her yesterday morning, and in order to expedite the trial called her as a witness yesterday afternoon. I consider it the duty of the General Counsel and myself as an agent of the General Counsel to initiate and to prosecute unfair labor practices which have occurred whenever it is lawful to do so. I believe sincerely that the matters pleaded have occurred and I don't intend to harass Counsel. [231]

* * *

Mr. Holmes: I am just as certain the authorities will not support him. Even the case which he has grasped, Cathey Lumber I think he mentioned, and the best he could rely on, he admitted to be dicta. Now, as to the theory upon which my opposition

is based, it isn't necessarily what Mr. Bamford has interpreted it to be. I think I stated it quite plainly and I did not base it upon surprise. I think there are good, sound grounds, quite apart from that. Surprise would be a basis for asking for a continuance and I reserve that right but my opposition to the motion is not based upon the matter of surprise; my opposition is based upon the theories which I previously stated. Now, Mr. Bamford contends that it is permissible to amend the Charge. That may be true under certain circumstances. There is nothing in the Rules and Regulations, however, which permit it. Perhaps the Board has done so, perhaps Courts have upheld them in that. However, there are some limits to it. Certainly an amendment to a Charge must be germane to the original charge and the amendment to this Charge pertains to a wholly separate and new case. What the General Counsel is attempting to do here is to try to get a case tried which has been outlawed and he is trying to do it through the sham of amending the original charge pertaining to a different case. [237] Now, that is clearly a type of amendment to a charge which is not permissible and which would be an abuse of the discretion of the Trial Examiner, if he has any discretion in this matter. Where attempts to amend charges have been permitted, and I am certain the authorities will sustain me—the amendments have been germane to the original charge. They have not pertained to wholly separate cases. Now, the only thing that possibly connects Mr. Scheuermann with Mr. Marovich is the statement of one witness that she heard both of their names mentioned, not

together, separately. She heard their names mentioned separately, but in the course of a discussion which she was listening to when she wasn't invited. Now, that is not such a connection as to make Mr. Marovich's case Mr. Scheuermann's case or vice versa or to make them inextricably connected so that they can be the subject of the same charge or that one can be brought in as an amendment to the charge of the other almost a year later. It just has nothing to do with it, despite the fact that one witness says that she heard their names mentioned, not together but separately, in the course of one discussion. The Charge must be based upon acts occurring within six months prior to the filing of the charge. [238]

* * *

Mr. Holmes: If this amendment were permitted, there would be no limit to amendments to charges and complaints. It is not in the record yet, but Westinghouse laid off almost a thousand employees during the fall of 1949. Now, if Mr. Bamford can and Mr. Scheuermann can amend the Complaint and the Charge respectively, what is to prevent them from amending the Charges and Complain for a thousand employees, some of whom may feel that they were discriminated against in the course of their layoffs or discharges. There is simply no limit to it, if this is allowed. [241]

* * *

Mr. McGraw: Just a minute, Mr. Trial Examiner. First of all, I want the record to show, if you

please, we take exception to your ruling permitting the Complaint to be amended; secondly, we want to answer the Amended Complaint at this time by verbally denying it specifically and categorically.

Trial Examiner Parkes: Very well. Do you wish to reply, Mr. Holmes?

Mr. Holmes: We want to reserve the right to file a written amendment to our Answer, answering the Complaint, and also to file a written motion to dismiss the amendment to the Complaint.

Mr. Bamford: May I say one word? I would appreciate it if Counsel would file either a written answer or state the precise amendments to their present answers as soon as possible. I realize that they will have to have time to think about it.

Mr. Holmes: I think the law gives you five days or ten days.

Mr. Bamford: It doesn't, as a matter of fact, but it lies within the discretion of the Trial Examiner. [251]

Trial Examiner Parkes: Well, I am certain we can't expect him to give his answer today.

Mr. Bamford: No, I just say I would like to have the answers as soon as possible because my future trial of the case may depend upon the answers. [252]

* * *

MRS. CHLOE ANDERSEN

resumed the stand, was examined and testified further as follows:

Cross-Examination

By Mr. Holmes:

Q. Mrs. Andersen, I understood Mr. Bamford to say that you had to get back to work, is that right? A. Yes.

Q. Where are you working?

Mr. Bamford: Objection, irrelevant.

Mr. Holmes: I don't think it is at all irrelevant, and I think if I may ask a few more questions I can show why it is relevant. May I reserve that question for the moment?

Trial Examiner Parkes: All right.

Q. (By Mr. Holmes): When did you last work for Westinghouse? [253]

A. Up until, I think it was April, April or May.

Mr. McGraw: I am sorry, I can't hear you.

The Witness: Oh, I am sorry.

Q. (By Mr. Holmes): Up until April or May?

A. Yes, when I went on my vacation. I am not sure, I am not exactly sure of the date.

Q. You are not sure of the date?

A. The exact date.

Q. Then, you went on a vacation? A. Yes.

Q. For how long?

A. I had two weeks' vacation.

Q. You had two weeks' vacation?

A. Yes. Then I had a thirty day leave of absence after I came back from my vacation.

(Testimony of Mrs. Chloe Andersen.)

Q. And did you work after you came back from the thirty day leave of absence?

A. No, then I went on disability for thirty days?

Q. You went on disability for thirty days?

A. Yes.

Q. And are you still on disability?

A. No, I wrote Mr. Everett a letter about two weeks ago.

Q. What did that letter state?

A. It stated that my doctor had advised me not to return to the type of work I was doing at Westinghouse. [254]

Q. What type of work was that?

A. It was inside of an office, with no windows, and I didn't get any fresh air. My health was very run down at the time. My blood pressure was very low and he suggested I get out in the open.

Q. What type of work are you doing now?

Mr. Bamford: Objection.

Trial Examiner Parkes: Overruled.

A. I am now out in the open.

Q. (By Mr. Holmes): What kind of work are you doing?

A. I am working in a caddy house.

Q. At a golf course?

A. Yes, at a golf course.

Q. What are you doing, selling golf equipment or golf balls?

A. Taking green fees.

Q. How long have you been working there?

A. Since last Friday.

Q. Since last Friday?

A. Yes.

(Testimony of Mrs. Chloe Andersen.)

Q. When did you go off the disability roll?

A. I think I wrote that letter about two or three weeks ago. I am not sure.

Q. I am referring not to the time you wrote the letter. I say, when did you go off the disability roll; when did you cease receiving disability payments? [255]

Mr. Bamford: Objection. I fail to see the relevancy of this line of questioning.

Q. (By Mr. Holmes): Were there any disability payments——

Mr. Bamford: Just a minute. There is an objection pending.

Trial Examiner Parkes: He changed his question.

Mr. Bamford: Could I hear the question, please.

(Question read.)

Mr. Bamford: Objection, irrelevancy.

Trial Examiner Parkes: Overruled. You may answer.

A. The first thirty day leave of absence I had I was on sick leave and I received three weeks' pay for that.

Q. (By Mr. Holmes): But you didn't receive any pay after that? A. No.

Q. Have you notified Westinghouse that you are not returning?

A. I think that letter stated that I would not return to that type of work, that I would come and see them in case they had anything else.

Q. What kind of work were you doing just before you left? A. Copy typist.

(Testimony of Mrs. Chloe Andersen.)

Q. Where? A. In Building 41.

Q. What was the department?

A. I was across the hall from Mr. McAuliffe's office, in that [256] little office with no windows, but I was working for Mr. Spedding, who was a manufacturing engineer.

Q. Was that the last work you did before you left? A. Yes, sir.

Q. Weren't you transferred before you left to a department called Project "N"?

A. I was, but I was still across the hall. I was still in Building 41.

Q. You were still working in Building 41?

A. Yes, my office was there.

Q. But you were working on materials pertaining to the so-called Project "N"? A. Yes.

Q. You were? A. Yes.

Q. Did you undergo a security screening with respect to your work on this Project "N"?

Mr. Bamford: Objection, relevancy.

Mr. Holmes: I think it goes to the credibility of the witness.

Mr. Bamford: Well, I don't see how it does now. Perhaps Counsel can make an offer of proof.

Mr. Holmes: Well, I want a ruling on it first before I make my offer of proof.

Trial Examiner Parkes: I don't see that it is particularly [257] material. You can make an offer of proof.

Mr. Holmes: Yes. I offer to prove that this witness was, prior to the time that she left Westing-

(Testimony of Mrs. Chloe Andersen.)

house, assigned to work in connection with the so-called Project "N," which is a Government project which requires that the employees undergo a security screening, and that this employee did undergo such a security screening and that she was denied permission to work on Project "N" because of a ruling on the security screening and I think that goes to the credibility of this witness.

Mr. Bamford: A ruling by whom?

Mr. Holmes: By the United States Navy Security Officer, who worked in connection with that project "N" at the Westinghouse Plant and I am going into it, as I say, because I think it affects the credibility of the Witness.

Mr. Bamford: If I may be heard on Counsel's Offer of Proof?

Trial Examiner Parkes: Yes.

Mr. Bamford: Even granting—assuming that the offer of proof is correct, I fail to see that the acceptance or rejection of the witness by a Navy Security Officer in any way, shape or form affects her credibility at this hearing for matters which occurred a year ago, as I think it is common knowledge that the acceptance or rejection of the Security Officer may be based upon many grounds, practically all of which have nothing to do with the credibility of the witness, but [258] usually—and I don't know anything about this matter at all—but usually they are based upon political affiliations or affiliations with one of the hundreds of organizations on the Attorney General's list; and I assume,

(Testimony of Mrs. Chloe Andersen.)

for instance, that this witness had once given \$5.00 to the Joint Anti-Fascist Refugee Committee. That, I suppose, would probably, in this time of stress, be enough to cause enough doubt in the mind of the Security Officer, in view of the importance perhaps of the project, to reject the witness, but it seems to me that the \$5.00 to the Joint Anti-Fascist Refugee Committee has nothing to do with this witness' credibility at all. It is entirely immaterial.

Mr. Holmes: Mr. Bamford would attempt to minimize it, of course, but this occurred prior to the Korean War. This did not occur since the Korean War. This occurred in April or May and I think it goes to the credibility of the witness.

Trial Examiner Parkes: The objection is overruled. You may proceed.

Mr. Bamford: May I have a continuing objection and exception?

Trial Examiner Parkes: Yes, you may have a continuing exception to the line.

(Question read.)

The Witness: I filed an application.

Q. (By Mr. Holmes): Did you fill out a questionnaire? A. Yes. [259]

Q. Do you know with whom you filed it?

A. Colonel Allen.

Q. Colonel Allen? A. Yes.

Q. Is he the Navy Security Officer who works at the plant in connection with this Project "N"?

A. I think he is.

(Testimony of Mrs. Chloe Andersen.)

Q. Do you know what the result of your filing that questionnaire was?

A. No, I don't. Like you just said—it is news to me.

Q. How long have you worked for Westinghouse?
A. Approximately seven years.

Q. Where did you first work for Westinghouse?

A. In Bloomfield, New Jersey.

Q. How long did you work there?

A. Two and a half or three years.

Mr. McGraw: I am sorry, I can't hear any of the answers.

The Witness: About two and a half or three years.

Q. (By Mr. Holmes): Then there was a break in your work for Westinghouse?

A. Then I moved to California.

Q. You moved to California? A. Yes.

Q. When was that? [260] A. In 1941.

Q. Did you go to work for Hendy?

A. Yes.

Q. The predecessor in the premises occupied by Westinghouse? A. Yes.

Q. Then, when Westinghouse took over the plant in 1947 did you resume work for Westinghouse?

A. Yes.

Q. I see. What kind of work were you doing?

A. At that time I was timekeeper.

Q. You were timekeeper? A. Yes.

Q. How long were you a copy typist?

A. A year ago last October I think I was hired

(Testimony of Mrs. Chloe Andersen.)

as a copy typist. I think in October of 1948.

Q. Were you transferred from some other job to the typing?

A. No, my job as a timekeeper had been eliminated and I was out of work for about eleven months or twelve months. Then I was rehired.

Q. Oh, you were rehired—as a new employee, do you know?

A. I think that is the procedure.

Q. Well, I just want to know whether you knew or not. Were you hired as an employee with seniority or with service or were you hired as a new employee in this new job?

A. I was hired, I think, as a new employee, and after six [261] months you regain your old service.

Q. And you went back to work for Westinghouse as a copy typist in about October of 1948, is that correct? A. Yes.

Q. What department did you work in?

A. Manufacturing Engineers.

Q. What is the office in which you worked?

A. It was upstairs over what is the grinding room in Building 41—at that time.

Q. Is that near Mr. McAuliffe's office?

A. Not then, no.

Q. It is not? A. No.

Q. Where is his office?

A. His office is downstairs.

Q. In Building—— A. 41.

Q. How long did you work in that upstairs office?

(Testimony of Mrs. Chloe Andersen.)

A. We only stayed there two or three months, then we moved.

Q. Where did you move?

A. Across the hall.

Q. Still upstairs? A. Yes.

Q. How long did you remain there?

A. Just a few months, and Mr. Bradford was terminated and we [262] were split up.

Q. Where did you go when you were split up?

A. The men went out in the shop, in various offices; that is, the manufacturing engineers, and I went downstairs in the little office across the hall from Mr. McAuliffe.

Q. What month was that, about?

A. That was, I think, in July.

Q. Then, did you remain there? A. Yes.

Q. Until the time you left Westinghouse?

A. No.

Q. How long did you remain there?

A. It was sometime before the first of the year, I was transferred out into a shop office.

Q. In Building 41? A. In Building 41.

Q. What office was that?

A. The Office of Department R24.

Q. Who is the Supervisor there?

A. Tommy Shields.

Q. How long were you there?

A. I don't know—several months. I was there through the holidays until Bob Spedding was made Supervisor of the Manufacturing Engineers. Then

(Testimony of Mrs. Chloe Andersen.)

he asked me to come to work for him on [263] Project "N."

Q. When was that?

A. I think it was in May.

Q. Of this year?

A. No, no. The latter part of February or March, I think it was. I think I could tell you if I looked at some papers I have here.

Q. Please look at them—if I may look at them, too.

A. Oh, you may. I am not sure that that has the date on it, but if it does—I had to make this copy—no, it doesn't have the date. It is just all the places that I worked.

Q. You mean the departments or the companies?

A. No, all the places I worked all my life. I keep that for when I fill in applications and they want to know your past record.

Q. They want to know where you worked?

A. Yes. I can figure it out from this.

Q. Then you don't know the exact dates when you were shifted?

A. No, we kept moving around and relieving each other so much that I don't recall the exact date.

Q. You say you worked for Mr. Shields for a while?

A. Yes.

Q. How many months?

A. It must have been four or five, at least.

Q. Who else did you work for?

A. At that time, that same time, I was still working for the [264] manufacturing engineers.

(Testimony of Mrs. Chloe Andersen.)

Q. And who was your supervisor, or who were the supervisors?

A. Mr. McAuliffe had taken charge of the manufacturing engineers.

Q. Did you have any direct contact with Mr. McAuliffe?

A. No, just with the manufacturing engineers.

Q. And who were the manufacturing engineers?

A. There was Ray Tassi, Bob Owens——

Q. Owens?

A. Bob Owens, Jack Staunton.

Q. Yes, any more? A. And Bob Speeding.

Q. Any more?

A. Russell Meredith. I think that was all they had at the time.

Q. Now, how long did you work for those men?

A. I had been working for them ever since I went as a copy typist.

Q. You spent nearly all of your time working for them?

A. No, not all of it. I mean—but I always did the copy typing for the manufacturing engineers.

Q. I think I see. Well, I want to know what other supervisors you worked under besides Mr. Shields, of course.

A. Well, I think Larry Silva is considered a supervisor?

Q. Silva? [265] A. I think.

Q. And who else? I mean directly, not remotely. I mean directly, who was your supervisor?

(Testimony of Mrs. Chloe Andersen.)

A. Well, that is all.

Q. Are those all? A. Yes.

Q. Who gave you your work to do regularly, who talked to you about your work, told you what to do and when to do it? A. Practically no one.

Q. Practically no one? A. No.

Q. Well, where did you get most of your work?

A. They just dropped in and dropped it on the desk.

Q. Who do you mean by "they"?

A. The manufacturing engineers, and Tommy Shields and Larry Silva.

Q. That is seven individuals altogether, is that right? A. Yes.

Q. Five manufacturing engineers and Shields and Silva, is that right? A. That's right.

Q. What connection did you have with Mr. Buckingham as far as your work was concerned?

A. As far as my work was concerned I don't know I had anything. [266]

Q. No connection with him?

A. Except that everything I typed for his department—I think it was his department.

Q. I see, but did you have any direct connection with him in the course of your work? A. No.

Q. Where was his office with respect to yours?

A. Out in the shop, in the same building.

Q. But that is a large building, isn't it?

A. Yes, it was several hundred feet from my office.

(Testimony of Mrs. Chloe Andersen.)

Q. You had no direct connection with him in the course of your work?

A. Not unless he wanted a blueprint or something and I got it for him.

Q. Did he come personally for that or send somebody? A. He usually sent somebody.

Q. What direct connection did you have with Mr. Harrison in the course of your work?

A. His office was right across the hall from the one I had when I worked in the shop. I used his adding machine.

Q. You used his adding machine?

A. Every day.

Q. You say you were in the shop for how long?

A. I think four or five months.

Q. And can you give me the dates of those [267] months, approximately?

A. No, I can't. It was before the holidays.

Q. Before the holidays in 1949, or was it before the holidays in 1948?

A. It was before the holidays in 1949, shortly before the holidays.

Q. Was it during the fall of 1949?

A. Yes.

Q. You say it was four or five months; would that be from August to December or just what months would it be, out in the shop?

A. I think it was probably November, December, January, February and March.

Q. November to March?

A. Now, wait a minute. I know I was there in

(Testimony of Mrs. Chloe Andersen.)

October because I took a vacation then. I was there in October.

Q. Is that when you started, as far as you can recall? A. I think it must have been October.

Q. And you started to work out in the shop in October of 1949, and you were out there four or five months?

A. I was out there until after the holidays, until Bob Speeding asked me to go with Project "N."

Q. In the spring of 1950? A. Yes.

Q. That was the period, then, when you had some connection [268] with Mr. Harrison in the course of your work, is that right, from October, four or five months forward? A. Yes.

Q. Then you hadn't had any connection with Mr. Harrison in your work prior to that time, is that right?

A. I had talked to him many, many times, but as far as my work was concerned, no.

Q. What did you talk to him about?

A. Just generalities.

Q. Was his office near yours—he wasn't out in the shop, was he?

A. He has an office right there in Building 41.

Q. Yes, but it is not in the shop, is it?

A. It is just a few hundred feet from mine. One was at one end of the office and one at the other. You had to go by his office to get to mine.

Q. When you went to work? A. Yes.

Q. How is it you became acquainted with Mr. Harrison and talked to him?

(Testimony of Mrs. Chloe Andersen.)

A. The same way you become acquainted with anyone you work with.

Q. But you didn't work with him during the day? A. No.

Q. Was it just a matter of saying "Good Morning" or "Good [269] Night"?

A. Talking about dogs and hunting. He is quite a sport.

Q. You had talked to Mr. Harrison about that?

A. Yes, talked about baseball, anything that happened to be——

Q. On what, a few occasions?

A. Not often, no; on a few occasions.

Q. Would they be talking about dogs and baseball and so on after you were working near his office and using his adding machine and in his office more frequently, is that when you talked to him about hunting and baseball and so on?

A. Yes.

Q. I want to know about prior to that time. Had you talked to Mr. Harrison other than a casual greeting when you were going to or leaving work?

A. No, I can't tell you how many times I have talked to him, but——

Q. Well, isn't it a fact that you were not particularly friendly with Mr. Harrison until you were working in the vicinity of his office and were using his adding machine? A. That's right.

Q. And you talked to him only as a matter of

(Testimony of Mrs. Chloe Andersen.)

greeting before that time, saying "Hello" or "Good Morning" or something of that sort?

A. Unless at the time I was in the upstairs office—they [270] used to come to the manufacturing engineers for information. I would get it out of the files for them and talk to them about work.

Q. Did Mr. Harrison ever do that?

A. Yes, he did, on several occasions; not often.

Q. In the course of your work what occasion did you have to talk to Mr. Goodenough?

A. I didn't have any.

Q. None at all? A. No.

Q. You never talked to Mr. Goodenough?

A. I would bid him the time of day when I met him.

Q. Was that all? A. That is all.

Q. On what occasion did you converse with Mr. Gorham?

A. I just bid him the time of day, too.

Q. Where was that? A. In the shop.

Q. He was in there occasionally? A. Yes.

Q. Now, do you know a Mr. Culbertson?

A. Yes.

Q. Where did he work?

A. He had an office right next to Mr. McAuliffe's secretary.

Q. And did you have occasion in the course of your work to [271] talk to Mr. Culbertson?

A. Yes, I did.

Q. Regularly? A. Yes.

Q. Often? A. Quite often.

(Testimony of Mrs. Chloe Andersen.)

Q. Was that whenever your office was in that vicinity—I presume? A. And before.

Q. And before? A. Yes.

Q. What about when you were out in the shop?

A. And when I was out in the shop, too.

Q. Did you have to go in to see Mr. Culbertson regularly? A. Yes.

Q. Do you know Mr. Clark?

A. Of the Engineers?

Q. Mr. Kermit Clark? A. Yes.

Q. You know him?

A. I know him when I see him.

Q. You know him when you see him?

A. Yes.

Q. Do you know him personally?

A. No. [272]

Q. Did you ever talk to him?

A. I don't think so, except perhaps to say "Good Morning."

Q. Do you know a Mr. Ghiorso, Emil Ghiorso? Perhaps I can refresh your recollection. I might state he is a foreman over in Building 61.

A. No.

Q. You don't know him?

A. I don't think so.

Q. You never talked to him as far as you know?

A. No.

Q. Do you know a Mr. Huffman, Sheldon Huffman? A. Yes, I do.

Q. That is, do you know him when you see him, or are you personally acquainted with him?

A. Well, I know him like I know the other fore-

(Testimony of Mrs. Chloe Andersen.)

men in the shop. I had to do a lot of work for him and with him and—well, I just know him.

Q. When did you do work for him or with him?

A. When I was in the Timekeeping Department. He was a foreman in the Welding Department. We had to have the foreman sign time cards.

Q. Every time card? A. They used to.

Q. They normally signed those before you got them, didn't they? [273]

A. Yes, but once in a while they missed one.

Q. If they missed one you would go and get him to sign it? A. Yes.

Q. After that period when you worked in the timekeeping office—that was in 1947?

A. That was prior to this period.

Q. That was 1947, isn't that right?

A. Yes.

Q. After that time, say, after you became a copy typist, what occasion did you have to have anything to do with Mr. Huffman in the course of your work?

A. He came to the office quite often for blueprints, for operation sheets, additional copies of operation sheets.

Q. And would you say you saw him often or regularly?

A. I would say I saw him at least once every day.

Q. At least once every day; then you saw him a good deal more than you did some of these other people, didn't you? A. Yes. [274]

(Testimony of Mrs. Chloe Andersen.)

Q. I don't mean while they walked in; I mean after they were in there and talking, were you sitting at your desk, continuing with your work, or were you sitting there watching them?

A. I couldn't see them from the desk.

Q. That is what I wanted to know.

A. No.

Q. You saw them walk in?

A. And then I saw them at least twice, perhaps three times, while they were talking, when I had occasion to walk past the door into Mr. Culbertson's office with the work that I was doing at that time.

Q. That was just a momentary glance while you were walking past the door, wasn't it?

A. That's right.

Q. How long would you say that conference or conversation or discussion lasted?

A. Approximately a half hour.

Q. Half an hour? A. Approximately.

Q. And except for these two occasions when you walked past the door of Mr. Culbertson's office, and I presume returned to your own desk, you could not see them, could you? A. No.

Q. I believe you stated that Mr. Gorham left before the [275] other gentlemen did?

A. Yes.

Q. Now, can you state how much before the bulk of them left, Mr. Gorham left?

A. He only stayed about five minutes.

Q. I see. With whom have you discussed this matter prior to your testimony here?

(Testimony of Mrs. Chloe Andersen.)

A. I have discussed it with Mr. Scheuermann.

Q. On what occasion?

A. The night it happened.

Q. The night it happened; did you go to his home? A. No.

Q. How did you happen to discuss it with him?

A. I had taken his brother to the ball game and he picked him up at my house on his way home from work.

Q. On Mr. Scheuermann's way home from work?

A. Yes.

Q. That was a night ball game? A. Yes.

Q. And you told him about it at that time?

A. Yes.

Q. Was anybody else present? A. Yes.

Q. Who? A. My husband. [276]

Q. Who else? A. And Les Ollis.

Q. Who else?

A. Mr. Scheuermann's brother, and myself.

Q. May I have your husband's initials or first name? A. Val Andersen.

Q. Does he work for Westinghouse?

A. No, he doesn't.

Q. Who had been to the ball game besides yourself and Mr. Scheuermann's brother?

A. I think that is all. We might have taken some children that night, but I don't remember. We usually pick up a few.

Q. And after that occasion when did you next discuss this matter with someone?

A. Yesterday, when I discussed it with the attorney.

(Testimony of Mrs. Chloe Andersen.)

Q. You discussed it with Mr. Bamford yesterday?
A. Yes.

Q. With whom else have you discussed it?

A. I don't recall that I have discussed it with anyone except the parties concerned.

Q. You say except the parties concerned?

A. Yes, Mr. Ollis and Mr. Scheuermann.

Q. You discussed it with Mr. Ollis also?

A. He was present that night.

Q. Have you discussed it with him since that time? [277]
A. Yes.

Q. When?
A. Oh, on various occasions.

Q. Well, how many times?

A. I can't tell you how many times.

Q. Several times with Mr. Ollis, would you say?

A. Yes, very recently I have discussed it quite often.

Q. On what occasions did you discuss it with Mr. Ollis? Did he come to you and ask you about it or did you go to him to tell him about it?

A. There were no occasions—we had been discussing Clyde's trial and we would just talk about it.

Q. And you would mention this matter again?

A. Yes, but that has been very recently.

Q. Well, how recently?

A. Since he was called to San Francisco for the hearing.

Q. You mean in the past week?

A. I would say in the past week.

(Testimony of Mrs. Chloe Andersen.)

Q. And you have discussed it several times with Mr. Ollis, is that correct?

A. (Affirmative nod.)

Q. I say, is that correct?

A. That's right.

Q. And you discussed it with Mr. Scheuermann more than this one occasion, haven't you? [278]

A. Yes.

Q. Several times with Mr. Scheuermann?

A. Yes.

Q. When? A. I don't know just when.

Q. Well, in the past week or several months ago?

A. Oh, I discussed it quite a bit with him in the past week—haven't seen much of him in the meantime.

Q. Have you discussed it with him between last September and the beginning of this trial here, a few days ago? A. I think I have.

Q. How many times? A. I don't know.

Q. Do you know the occasions? A. No.

Q. Have you ever discussed the matter with Jack Kraft?

A. I think he was in on some of the conversations when I discussed it with Mr. Ollis.

Q. Mr. Kraft was?

A. I think he heard it. I didn't go to him directly to discuss it with him, but he might have heard it. [279]

* * *

Q. (By Mr. McGraw): Did I understand you to say a few minutes ago that you discussed this

(Testimony of Mrs. Chloe Andersen.)

with Mr. Scheuermann on the same day that you heard it?

A. That's right.

Q. And what time of the day was it?

A. About 1:00 o'clock in the morning, I think.

Q. About 1:00 a.m.?

A. That's right.

Q. And did I also understand you to say that they had been to a ball game?

A. No, I had been to a ball game.

Q. Oh, I see; and who was playing and where?

A. It was out in Municipal Stadium, the Red Sox were playing somebody but I don't know who, at the time.

Q. Now, yesterday I believe you testified that you had heard Mr. Gorham speak many times. Can you tell us where some of those times were?

A. I have heard him speak to the men in the shop; I have heard him speak to the men in the cafeteria; I have heard him speak in the conference room, which was right next to my office. I have heard him speak in Mr. McAuliffe's office.

Q. And on how many occasions would you say you heard him speak?

A. Twenty or thirty.

Q. And were these meetings that were held inside the plant? [283]

A. Sometimes.

Q. Well now, when he was talking to the men in the cafeteria, was that just a small group or was it an organized group or what?

A. Just somebody sitting at a table eating their lunch. [284]

JOHN MAROVICH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bamford: [288]

* * *

Q. When did the company first inform you that you were going to be discharged?

A. It was on a Tuesday night, just prior to quitting time. My foreman, Tom Shields, come over and he told me, "Johnnie," he says, "I have to let you go." He says, "Tomorrow will be your last day."

Q. That would be Tuesday, September 19?

A. That is it.

Q. Now, where did this conversation take place?

A. Right by the machine I was operating.

Q. Was there anyone else present within earshot?

A. No, sir, not near us.

Mr. Bamford: Counsel for the Respondent union has pointed out that I mistakenly referred to the 19th of September as Tuesday. It appears from his calendar that it was Monday.

Q. (By Mr. Bamford): Did you reply to Shields?

A. Yes, I asked him, I says, "On what ground am I being terminated?" and he told me, he says, "Well,"—I asked him, [291] "Am I being terminated under the contract we have here for going

(Testimony of John Marovich.)

down by seniority rights and if it is my turn," I says, "I have no objection." And he told me, he says, "No, Johnnie, it isn't that. It is just the idea," he says, "You are just not cutting the buck." He says, "You are taking a little too much time on these smaller machines and your time on the big machines has been fairly good but on the smaller machines you haven't been making the time." And I says, "Well, that means that I haven't got the skill, Tommie." And he said, "No," he says, "you are just a little too slow." I says, "Well, that is it," and that was the end of it.

Q. Who was your shop steward?

A. Carl Schwartz.

Q. Did you ever speak with Schwartz about your discharge in his capacity as steward?

A. Yes, he came over the following morning and asked me, he says, "I hear you are being laid off." I told him, "Yes," I was. "Well," he says, "they can't do that. You have got seniority rights here." "Well," I says, "I don't know how far that will go around here." He says, "Well, I am going to look into it. I am going to see if I can't get ahold of"—what is that Labor Relations man's name?

Q. Mr. Goodenough?

A. Goodenough, that's it. So he said he had tried to get him on the phone a few times and he wasn't very successful and [292] towards evening, why, he came over and said, "I can't get ahold of him." I told him that was all right, "See what you can do about it," I said. "I am going to pull out."

(Testimony of John Marovich.)

Q. Do you know a Frank Gorham, Assistant Business Agent of 504? A. Yes, sir.

Q. Did you ever speak with Gorham about your discharge?

A. Yes, a couple of days later Frank called me up on the phone and asked me to come up to his office.

Q. Did you go?

A. Yes, I did. He invited me into his office there and we sat down——

Q. Was there anyone else present?

A. No, sir, not to my knowledge; just the two of us right there.

Q. And was there a conversation about this between you and Gorham?

A. Well, Frank says, "Johnnie," he says, "I don't know what we can do about this. We have gone as far as we can with it," and he says, "it doesn't seem like we can get anywheres and I don't think we can do a thing about it any more. If you want to fight the case," he says, "they have got this lottery charge to throw in against you." I said, "What lottery charge?" He said, "Running football pools and baseball pools." Well, I told him at that time I hadn't started no pools yet and I didn't see [293] what lottery charge they could hold against me.

Q. Well, did he tell you what the company's attitude was with respect to rehiring?

A. Yes, he told me.

Mr. Holmes: I object to that as calling for hearsay.

(Testimony of John Marovich.)

Trial Examiner Parkes: It is part of his conversation with Gorham. He may answer.

Mr. Holmes: It is still hearsay as to what the company's attitude was.

Trial Examiner Parkes: The objection is overruled.

A. (Continuing): He told me that—he says, “I don't think you will ever get back in, Johnnie, because both Mr. Buckingham and Mr. McAuliffe said they won't rehire you.” I said, “Well, if that is the case we might as well just forget it.”

Q. (By Mr. Bamford): Now, what is the process when you are discharged; are you given a termination slip, something of that sort?

A. Well, generally they give you twenty-four hours' notice and in that period of time, why—like I was given twenty-four hours' notice; then the following day close to quitting time, an hour or so, why, they gave me permission to check all my tools in, turn all my tool checks in. Then I was given my termination slip and taken to the Personnel Department and there I was given a slip to get my last checks that I had [294] coming there and then I came back to the shop and took my tools out to the guardhouse. [298]

* * *

Q. Did you know that Scheuermann was active in the Independent Westinghouse Workers Union? A. Yes, sir.

Q. Did he ever solicit you for membership in that union?

(Testimony of John Marovich.)

A. No, he didn't, but others did.

Q. Who were the others?

A. Why, oh, there was—well, Les was one of them, Ollis, and there was another fellow from below, Terry—I can't think of his name.

Q. Did you join the Independent Westinghouse Workers Union? A. No, sir, I never did.

Q. Did you remain a member in good standing of 504? A. Yes, sir.

Q. Do you know if the Independent Union distributed handbills, hand leaflets?

A. Yes, sir. By hand, at the gateways.

Q. Who did that?

A. Well, at times there was Clyde here and Les, and then they had some of the electrical workers, women electrical workers there, and men also from the Electrical Department. [297]

* * *

Q. Well, would you on occasion take a position contrary to that of Gorham and Scott?

Mr. Holmes: That is objected to as leading and suggestive. I should think counsel should be able to bring this out by having the witness testify to facts and not have counsel state the facts and ask the witness to agree with him.

Trial Examiner Parkes: Sustained.

Q. (By Mr. Bamford): Can you recall specific instances of your participation in discussion over these—

Mr. McGraw: Just a minute. Mr. Hearing Officer, I think, frankly, the entire line of ques-

(Testimony of John Marovich.)

tioning is going far afield. The fact remains that it doesn't make any difference what side he took in a Local argument. It doesn't go to any of the issues involved. The witness has testified he is still a member in good standing, indicating he was not disciplined or in any way acted against because of that, and counsel is purely on a fishing expedition for something that is immaterial, even if he finds it.

Trial Examiner Parkes: Well, I note the Complaint alleges that the witness and other employees Westinghouse discriminated against because they may have criticized the union. The objection is overruled. However, I will note your position.

Q. (By Mr. Bamford): Can you recall—well, I will repeat the question. [302]

Can you recall any specific meetings in which you participated in the discussion? [303]

* * *

Q. Did you pass out cards—excuse me.

When was that, if you remember?

A. Oh, that was around 1947, I think?

Q. Did you participate—

Trial Examiner Parkes: When in 1947?

The Witness: Well, I wouldn't know exactly, sir. I know—say, around, oh, I should judge around May or June, in there.

Trial Examiner Parkes: Very well. Go ahead, Mr. Bamford.

Q. (By Mr. Bamford): Did you pass out cards for the Steelworkers at that time?

(Testimony of John Marovich.)

A. I did, sir.

Q. Do you know if Clyde Scheuermann was expelled from the IAM?

Mr. McGraw: Just a minute. I object. That calls for a conclusion and opinion of the witness and it doesn't make and difference what his opinion is. We have all the facts in [305] evidence. Certainly this witness wouldn't possibly know about—

* * *

Q. (By Mr. Bamford): Do you know if Clyde Scheuermann was expelled by 504?

A. Yes, he was.

Q. How was he expelled, if you know?

A. At a meeting there, in our new Labor Temple, a meeting was held there and he was.

Q. Did you attend the meeting?

A. Yes, sir. There was a Board there that delved into Clyde and Les Ollis' case there and they read the decision of the Board before the membership and the membership voted on it and it was passed, where Clyde was fined and expelled from the organization, and the same with Ollis.

Q. How was this report presented? Was it presented at the meeting?

A. Yes, the chairman of the board that was in charge of the hearing there—I think his name was Henry Schmidt, at that time—he read it.

Q. Was he employed by Westinghouse at [306] the time? A. No, sir. [307]

* * *

(Testimony of John Marovich.)

Mr. Holmes: Is Mr. Bamford through?

Trial Examiner Parkes: Yes, I believe he was.

Mr. Holmes: Off the record a moment.

Trial Examiner Parkes: Off the record.

(Discussion off the record.)

Trial Examiner Parkes: On the record.

Mr. McGraw?

Cross-Examination

By Mr. McGraw:

Q. Mr. Marovich, you are now a member in good standing of Lodge 504, aren't you?

A. Yes, sir.

Q. Were charges ever preferred against [310] you? A. No, sir.

Q. Were you ever called before the Executive Board because of any of your activities in connection with the campaign of the Steelworkers to organize the plant in 1947? A. No, sir.

Q. Were you ever called before the Executive Board of the Lodge concerning any activities in behalf of the Independent Westinghouse Workers Union? A. No, sir.

Q. Were you ever interviewed by Mr. Scott with respect to any conduct of yours in connection with the Steelworkers' campaign? A. No, sir.

Q. Were you ever interviewed by Mr. Scott with respect to any activity on your part in connection with the Independent Westinghouse Workers Union? A. No, sir.

(Testimony of John Marovich.)

Q. If I asked you the same questions with respect to whether or not Mr. Gorham had ever asked or questioned you or discussed these same campaigns with you, would your answer be the same?

A. Yes, sir.

Q. It is a fact, isn't it, that during the most recent campaign for bargaining rights that nearly everyone in the shop discussed some phase of the pending campaign?

A. That is right, sir. [311]

Q. Now, going back to the date of your termination, did you report your unemployment to the union?

A. Yes, sir. I went the following day, sir.

Q. And that is—on the same day that you reported to the unemployment, the State Unemployment Office?

A. Yes, sir.

Q. Did you fill out a form at that particular time?

A. Where at, the state?

Q. At the union office?

A. At the union office, I think I did, because I was given this little card, this unemployed card that I had to take to the unemployment office every time and I had to register and report every week.

Q. Now, directing your attention to the period since your termination, did the union office ever call you with respect to employment at any other place since you left Westinghouse?

A. Yes, sir.

Mr. Bamford: Objection, irrelevancy.

Trial Examiner Parkes: Overruled. You may answer.

(Testimony of John Marovich.)

The Witness: Yes, sir.

Q. (By Mr. McGraw): Can you tell us about when that was?

A. Oh, I should judge that was around the latter part of April.

Q. And do you know where the job was?

A. Yes. Mr. Gorham called me up, said "Johnnie, do you want [312] to go to work?" and I said right offhand, "Yes, sir." And he said, "I have a job for you at the San Jose Foundry." And I said, "That will be swell." I said, "When do you want me to report?" He said, "In the morning." I said, "All right, I will see you in the morning." I hung up and a few minutes later I called him back and said, "I can't make it, Frank. Give it to someone else."

Q. Now, at any time since April did the union call you with respect to employment any place?

Mr. Bamford: May I have a continuing exception to this line of questioning?

Trial Examiner Parkes: You may.

A. Yes, sir. When I went to pay my dues I seen Frank there at the office and he asked me, "Are you working, Johnnie? Are you ready to go to work?" and I told him I wasn't working and wouldn't be ready until about September sometime.

Q. (By Mr. McGraw): About when did this occur?

A. Oh, I imagine this occurred right—oh, around July.

(Testimony of John Marovich.)

Q. Of—— A. This year.

Q. 1950? A. Yes, sir.

Q. Did you ever have any kind of an argument with Mr. Gorham concerning any of your activities at the Westinghouse Plant at any time or [313] place? A. No, sir.

Q. Now, directing your attention to the time that Mr. Gorham called you into the office a few days after your discharge, who started that conversation?

A. Well, when we came into the office——

Q. Yes? A. I think Mr. Gorham did, sir.

Q. And what did he say?

A. He called me into the office and he said, "Sit down, Johnnie." And he said, "Johnnie, I don't think we can go any further on your case. We have gone as far as we can and I don't think we can do anything more for you."

Q. All right. Now, did he explain what had been done on your case?

A. He said he took it in and they said—they refused to even discuss it and that—let's see now—discuss it, and then he said that he didn't think I would ever get back there again.

Q. Did he tell you who he discussed it with?

A. No, sir. He did not tell me who he discussed it with.

Q. Did you file any kind of a grievance, did you fill out any papers or grievance blanks or anything like that? A. At that time—no, sir.

(Testimony of John Marovich.)

Q. Did you fill out a grievance at the time you were terminated? A. No, I didn't. [314]

A. No, I didn't. [314]

Q. And do you know whether or not a contract was in effect at that time? At the time of your termination? A. You mean with 504, sir?

Q. Yes. A. Yes, it was.

Q. You were aware, were you not, that a union shop election had been held?

A. Yes, in August of that year.

Q. Now, do you know whether or not other people were being laid off at about the same time that you were terminated? A. Yes, sir.

Q. I believe your testimony on direct examination was that if you were laid off in strict accordance with seniority, why you had no——

A. Objection to it, yes, sir.

Q. Did you ever discuss your termination with Carl Schwartz after you left the plant?

A. No, sir.

Q. And you have had no further contacts with him up until——

A. Right to the present time, right here, sir.

Q. Now, when did you first learn about these proceedings and your involvement in these proceedings?

A. Oh, last night or yesterday, sir.

Q. And how did you happen to learn about it?

A. Well, Mr. Danforth—is it, here—came over to my place [315] and told me that Les and Clyde here had filed their claims in and based on the evi-

(Testimony of John Marovich.)

dence and facts given, why, after he told me some of the facts in the case, why, I thought I should present my claims.

Q. Now, going back to the time that Mr. Ollis told you that you were going to be discharged, did you have frequent occasions to converse with Mr. Ollis before he told you that? A. No, sir.

Q. Did you know him?

A. No, sir—wait a minute. Who is that?

Q. Ollis.

A. Ollis—no, I have never seen Mr. Ollis here, oh, for months, until right now.

Mr. Bamford: I don't think he understands the question.

Mr. McGraw: Probably not.

Q. (By Mr. McGraw): I understood you to testify that on the—on Thursday of the week before you were laid off that Ollis came to you and told you to expect it? A. Yes, sir.

Q. Or something along that line. Now, just what did he tell you?

A. He says, "Johnnie," he says, "they have got us slated to go. You are going first, and then I and Clyde and they figure on one or two of the other boys."

Q. And did he tell you how he knew that? [316]

A. No, sir. He did not tell me.

Q. Did you ask him?

A. I asked him, yes. He said, "I got that from an individual," he says, "that is in the know, and he passed it on to me."

(Testimony of John Marovich.)

Q. Now, did you make any inquiries to Schwartz at that particular time about the pending layoff?

A. No, sir, I didn't.

Q. Did you complain to him?

A. No, I didn't, except the day I was—the evening I was laid off, and the following morning, when Mr. Schwartz came up, he said, "I understand you are being laid off." I said, "Yes, sir." He said, "I will see what I can do for you." He said, "You have a lot of seniority." And I said, "All right." He said, "I am going to see if I can't get ahold of Goodenough." Well, he tried to get Goodenough that day and, why, Mr. Goodenough wasn't around, evidently, and he told me he had no success and I said, "Well, do what you can and let me know what the outcome is."

Q. Had you told Mr. Schwartz that you had heard some time before that you were going to be laid off?

A. No, sir, I did not.

Q. You did not mention that to him?

A. I did not mention that to Mr. Schwartz.

Q. Did you ever operate any pools, football pools?

A. Yes, sir. [317]

Mr. Bamford: Objection, relevancy.

Trial Examiner Parkes: Overruled. There was some testimony on the direct, as I recall.

Q. (By Mr. McGraw): And had you ever observed any notices on the company bulletin boards forbidding the solicitation of pools?

A. Yes, sir, I have, prior to that.

Q. Did you ever come to the union and tell any

(Testimony of John Marovich.)

of the union officers that you were active for and in behalf of the United Steelworkers?

A. No, sir. I never did, sir.

Q. Did you ever tell any of the union officers that you were active on behalf of the Independent Westinghouse Workers?

A. No, sir.

Q. Did you ever distribute any handbills for and on behalf of the Independent Westinghouse Workers?

A. No, sir.

Q. Did you ever wear a button or any visual means of indicating your sympathy with the Independent Westinghouse Workers?

A. No, sir.

Q. Isn't it a fact, Mr. Marovich, that you knew that most of the employees at Joshua Hendy had petitioned the Grand Lodge to transfer them to Local 504?

A. No, sir, I didn't know that?

Q. Isn't it a fact that Mr. Scott told you that when he asked [318] you to cooperate and explained the setup of the District Lodge?

A. He did, sir, at that time, yes. He said I wasn't cooperating with him at that time.

Q. Now, isn't it a fact that he told you at that time that a majority of the people employed out there had requested transfer to Local 504?

A. No, sir, not to my knowledge.

Q. Would you say that he didn't tell you?

A. No, I would say he didn't tell me, yes, sir.

Q. Did you ever discuss with Mr. Ollis the contract that was executed after the union shop election in 1949?

(Testimony of John Marovich.)

A. I might have, sir, discussed the agreement, yes.

Q. And did you discuss it with Mr. Scheuermann?

A. Well, if we are going to get on that point, I discussed it with many of the boys over there, not only——

Q. Then is it your testimony, or——strike that.

Is it fair to say that you may have but you don't know of any specific instance in which you discussed it with him? A. That's right, sir.

Q. Didn't you discuss the matter of their reinstatement because of the union shop election and the contract that had been signed?

A. You mean back——

Q. Their reinstatement in Local 504? [319]

A. After their trial, sir?

Q. Yes. A. No, sir; I never did that.

Q. When was the first time you knew that Mr. Scheuermann had gone to the National Labor Relations Board and filed a Complaint or filed a Charge?

Mr. Bamford: Objection, relevancy.

Trial Examiner Parkes: Overruled.

A. It was the day that—I don't know whether you were there—Mr. Gorham or Mr. Scott had filed with the Board for an election at the plant. That is when Mr. Scheuermann and Ollis were up there, that day, filing for the Independent, at the same time. They let me know when they came back to work that night.

(Testimony of John Marovich.)

Q. (By Mr. McGraw): I think you misunderstood my question. I am speaking now about the charges that caused this hearing to take place. They are unfair labor practice charges. When was the first you knew about an unfair labor practice charge being filed by Mr. Scheuermann?

A. Well, I heard a few months back that he had filed a charge but I never paid—I didn't ask no specific date or time on it at all.

Mr. McGraw: That is all.

Q. (By Mr. Holmes): Do you know why he had filed a charge?

A. No, sir, but I could generally base it on some unfair labor [320] practice. [321]

* * *

Mr. Bamford: At this time I should like to offer in evidence as General Counsel's Exhibits next in order the Original First Amended Charges in this proceeding, which were filed September 9, 1950, and I shall request that the Reporter mark them as General Counsel's Exhibits next in order, 7 and 8, I believe.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 7 and 8 for identification.)

Mr. McGraw: Which is 7?

Mr. Bamford: 7 is 20-CA-328 and 8 is 20-CB-102. I would like the record to show that I have served Counsel in person with copies of these

Charges, and at this time I should like to offer GC-7 and 8 in evidence.

Mr. McGraw: And I object to their admission on the ground that the Trial Examiner has no right to accept a Charge.

Trial Examiner Parkes: Mr. Holmes?

Mr. Holmes: I am not objecting.

Trial Examiner Parkes: May I see the exhibits?

Mr. McGraw: In support of my objection, before you rule on it, I would like to give you one citation.

Trial Examiner Parkes: All right.

Mr. McGraw: And that is the Sewell Manufacturing Company, [334] 72 NLRB No. 19 in which the Motion to Amend the Charge at the hearing was denied, since the Board's Rules and Regulations do not provide for filing Charges with the Trial Examiner, and that is from a digest and index of decisions of the Board, published by the Board, covering Vols. 71 and 74. [335]

* * *

CHARLES V. PACHORIK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [338]

* * *

Cross-Examination

By Mr. Holmes:

Q. Did you ever hear any of the men in the group complain about Marovich letting his work go while he was wandering around the shop

(Testimony of Charles V. Pachorik.)

A. I don't recall.

Q. You don't recall any such complaint?

A. I don't.

Mr. Holmes: That is all.

Q. (By Mr. McGraw): Mr. Witness, are you a member of the IAM? A. I am.

Q. And how long have you been a member?

A. Since I started working here, when Joshua Henry had the plant.

Q. Were you a member of the IAM back East?

A. No, I wasn't?

Q. Now, did you become an officer of the Independent Westinghouse Workers Union?

A. No, sir.

Q. I believe you testified that you are still employed at Westinghouse? [369]

A. That's right.

Q. Have you ever been tried by a Trial Committee of Lodge 504 for any offense?

A. No, sir.

Q. Have you ever been called on to explain any conduct before the Executive Board of the Local?

A. I have not.

Q. Have you ever been criticized by Mr. Gorham personally for any of your actions?

A. No, I haven't.

Q. Did you ever have occasion to file a grievance with Mr. Schwartz?

A. No, I haven't. I don't believe I have.

Q. Well, it is a fact, isn't it, that you and Mr. Schwartz liked to argue with each other?

(Testimony of Charles V. Pachorik.)

A. Not only Mr. Schwartz and I; that was general in the shop. That is typical in a machine shop.

Q. You argued with him about different subjects?

A. Well, I wouldn't say argued. I'd say just talked about things.

Q. And did Mr. Schwartz ever tell you that he was going to get your job because of your opinions about this Independent Westinghouse Workers Union? A. No, he didn't tell me.

Q. And in fact, within a few days after the election it kind [370] of became a forgotten issue, didn't it? A. What do you mean by "it"?

Mr. McGraw: Well, would you read the question back, please.

(Question read.)

Mr. McGraw: I will reframe the question. Perhaps you didn't understand it.

Q. (By Mr. McGraw): Isn't it true that a few days after the election people just forgot about the complaints and the contests they had had before the vote was taken?

A. You say a few days? Well, there was still talk. Fellows——

Q. Well, progressively you talked less about it?

A. Oh, yes. That's right.

Q. And so now, until just in the last week or two, it has probably been months since anyone has discussed it? A. That's right.

(Testimony of Charles V. Pachorik.)

Q. Did you ever go to the Personnel Office to determine what your seniority standing was?

A. I believe I mentioned it to Mr. Kelly at the time I was notified of my termination, and when I left his office I was under the opinion that my seniority was good as of 1924.

Q. And you know for a fact that some people who were working at Joshua Hendy when you came to work there were laid off before you were considered for a layoff, don't you? [371]

A. No, I don't know that. [372]

* * *

FLOYD KING

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [373]

Direct Examination

By Mr. Bamford: [374]

* * *

Mr. McGraw: It also appears the General Counsel is trying to develop a theory that any time a union representative disagrees with a member, no matter on what occasion or what ground, it is an unfair labor practice and it demonstrates bias and hatred and prejudice. [379]

* * *

(Testimony of Floyd King.)

Q. Were you present at the union meeting when Clyde Scheuermann was fined and expelled?

A. Yes, I was.

Q. Who presented the charges brought against him, or is that a correct statement? How did—I realize I may have inadvertently made a mistake on that. Will you please strike that. I will withdraw the question and ask you this:

How was his name brought before the meeting?

Mr. McGraw: I object, Mr. Trial Examiner. It doesn't make any difference how it was brought. We will stipulate that it was brought in strict accordance with our Constitution and Bylaws.

Trial Examiner Parkes: I assume it is a preliminary question. The objection is overruled.

Q. (By Mr. Bamford): How was his name brought before the meeting, Mr. King?

A. Henry Smith was the one who reported the findings of the [391] committee.

Q. And what were those findings? Were they presented orally? A. Yes.

Q. And what were the findings?

A. The findings were that Clyde Scheuermann and Les Ollis were found to be guilty of conduct unbecoming a member and dual unionism. They were fined \$500 apiece and expelled from the union.

* * *

(Testimony of Floyd King.)

Cross-Examination

By Mr. Holmes: [392]

* * *

Q. And you just differed with the interpretation for the application of the contract, isn't that right?

A. I was going by what the contract said.

Q. Well, at least, what you thought it said?

A. No, what it did say.

Mr. Holmes: That is all.

Q. (By Mr. McGraw): Mr. King, are you still a member of 504? A. That's right.

Q. Have you ever been tried by a Lodge for any misconduct? A. No.

Q. Have you ever been called before the Executive Board to explain any conduct of any kind?

A. No.

Q. Have you frequently attended meetings of the Lodge? A. Yes.

Q. Did you attend the meeting of the Lodge at which it discussed and acted on the contract which is now in effect? [399]

A. Do you mean the meeting where the contract was approved by the membership?

Q. Yes. A. Yes, I was.

Q. And did you receive a written notice of that meeting advising you when the meeting would take place and where? A. Yes.

Q. And in fact, all the members of the Lodge received such? A. No.

Q. Well, can you tell us who received it and who didn't?

(Testimony of Floyd King.)

A. I can't remember exactly but I can remember that there were four or five who did not receive a card.

Q. And it was common knowledge in the plant as to when the meeting would take place and what the purpose of the meeting was?

A. Well, it was posted on the bulletin board, as I remember. [400]

* * *

Recross-Examination

By Mr. McGraw:

Q. Isn't it a fact that in the positions that you took on the different matters that came before the Executive Board that you consistently took the position that you thought was right on each question?

A. That I thought was right?

Q. Yes, and isn't it true that sometimes that was in agreement with Mr. Gorham's position?

A. That's right.

Q. And sometimes in disagreement?

A. That's right. [404]

Q. And the same would be true of all of the other members of the Executive Board, wouldn't it, to the best of your knowledge?

A. Well, some of them never even showed up, so they couldn't take a position.

Q. But of those that were there and participated, so far as you know, they invariably took the position that they thought was right on each question?

A. I couldn't say because I was only judging for myself.

(Testimony of Floyd King.)

Q. Now, isn't it a fact that the business agents are part of the Executive Board?

A. I couldn't be specific.

Q. Well, they participated and they voted, didn't they?

A. They participated.

Q. Do you know whether or not they voted in the decisions of the Executive Board? Did they cast a ballot?

A. I don't think they did.

Q. Do you know whether or not the sentinel was a member of the Executive Board?

A. Yes, he was.

Q. And the conductor? A. Yes.

Mr. Holmes: These are words of art that I don't understand. It takes me back to my college days, though.

Q. (By Mr. McGraw): Now, can you tell us whether or not the members of the Executive Board were considered to be officers [405] of the Local?

A. By who?

Q. Well, first, by you? Do you know whether or not they were considered to be officers of the Lodge?

A. They were never spoken of as such.

Q. Do you know what the provisions of the By-laws of the Lodge were with respect to whether or not they were to be considered as officers of the Lodge?

A. I don't believe they are.

Q. And is a steward considered to be an officer of the Lodge? A. No. [406]

* * *

After Recess

(Whereupon the hearing was resumed, pursuant to the taking of the recess, at 1:30 o'clock, p.m.)

Trial Examiner Parkes: The hearing will be in order.

It doesn't make any difference to me which one of you gentlemen would like to put your case first.

Mr. Holmes: Before anybody puts on a case, I want to move to dismiss the complaint in its entirety and, in the alternative, to move to dismiss the complaint insofar as it pertains to John Marovich; and I think in that connection, those sections are: part 1 of paragraph 3, part 1 of paragraph 4, part 1 of paragraph 5, and the mention of John Marovich in paragraph 6, and in paragraph 7, and again in the alternative, the language so far as it relates to Scheuermann. The grounds for the motion are as follows: One, that the amended consolidated Complaint is based upon a first amended charge which was filed either today or yesterday, at least in the last few days, which charge differed from the first charge in that it referred to an alleged unfair labor practice against John Marovich. The charge was not timely filed and no complaint may be based upon the reason that it was not filed within six months after the acts complained of.

The filing of the first amended charge was obviously an attempt to revive the cause of action in favor of Mr. Marovich against the Company which was outlawed and it was past the [410] Statute of

Limitations set out in 10(b), and that the filing of such a charge was in reality an attempt by the Counsel, for the General Counsel, to circumvent the provisions of Section 10(b) and to thwart the purpose of the Act.

The complaint based upon such a charge should be dismissed because no complaint can be issued unless a charge is filed within six months after the act complained of. The matters relating to Marovich are new and different from those relating to Scheuermann. They are not germane to the case involving Scheuermann; those charges alleged in the Complaint pertaining to Marovich are completely independent. The case might be different if the discharge of Marovich and the discharge of Scheuermann complained of were so closely related that they could be considered the same act, but that is not the case here. There are two completely different acts, and the attempt to run them in together is unlawful and improper and the Complaint should be dismissed on that basis. Certainly, the portion of the Complaint relating to Marovich should be dismissed on that basis.

The motion is further based upon the ground that the Complaint is not supported by substantial evidence.

I am going to discuss briefly, the testimony of the witnesses which have been brought here by the General Counsel. Mr. Scheuermann testified that he had been employed at Westinghouse since Westinghouse took over the plant, employed there [411] by the predecessor of the plant, that he had been a mem-

ber of the I.A.M. That in the spring of 1949, he and some others organized a union called the Independent Westinghouse Workers Union and that he became the president of the union and directed its affairs. He took leave of absence from Westinghouse to direct the affairs of that union and to direct the organizational campaign. He also testified that he was expelled from Local 504 at about that time. He did not testify and nobody else testified that he, or anybody else, gave any notice of the fact that the Company knew, by reason of semi-official notice, knowledge of the fact that Scheuermann was not at all times a member of the I.A.M.

Mr. Scheuermann returned to work, he testified, after this organizational campaign and after this election. He remained at work, I think he said he returned to work about July 10, said it was the month of the election which was held about July 7, as I recall, continued to work there from early in July until early in November. No one asked him any questions, that is, as far as the Company was concerned, no one asked him for the Company whether or not he was a member of the union or was recognized by the union membership and he didn't tell anybody who had authority to receive the information for the Company that he was not a member of the I.A.M., or that he had been expelled from the I.A.M., or anything else about his relationship with the I.A.M.

Mr. Scheuermann testified that during this period he knew, and that it was common knowledge about the plant, that the I.A.M. was negotiating a con-

tract with the Company. That among other things the I.A.M. was seeking a union shop. He stated that he knew there was a union shop election in the plant; he said he did not vote, but he knew the day on which the voting took place and he also knew the results of the voting, that the union was entitled to enter union shop contract. He denied that he knew when the contract was actually signed or that he had seen a copy of the contract, but he did admit that it was general knowledge about the plant that you had to belong to the union to work there, that he knew that people were talking about those who did not belong to the union, but he did not state that speech by anybody for the Company in any type of supervisory capacity, knew or talked to him about his lack of membership in the I.A.M. or his relationship to the I.A.M. in any way.

Now, in that situation where Mr. Scheuermann, a man of eight or nine years experience in unions, including experience as an union official directing an organizational campaign, a man with full knowledge of the fact that the Company was negotiating a contract with the I.A.M. in a plant where there had been a union shop for eight years, and completely after, or including the time when union shop contract was held, a man with that knowledge took no steps to find out his status under the new contract which he knew would be negotiated. He made no effort to talk to any supervisor or Mr. Good-enough, the Industrial Relations Manager, or anybody else to find out what he had to do and what his status would be. He simply assumed that the

Taft-Hartley Law would protect him. As he put it, he assumed the union shop contract would have no effect on him because of the Taft-Hartley Law, and he is presumed to know as a mature, intelligent citizen, and certainly as an experienced union member and official, he is presumed to know the requirements under that law, to-wit: That he must tender to the union having lawful shop contract the initiation fees and dues normally required of everybody else.

Now, whether or not he had that knowledge subjectively, is beside the point. He is presumed to have the knowledge because he was suffering no disability at that time, so he is presumed to know that he had to pay his dues and his initiation fees, and he knew, or had good reason to know, that there was a union shop contract. Now, even if he did not have actual knowledge that the contract had been signed, he is a reasonable man, he is presumed to be, and certainly his experience in union affairs placed him under the obligation to make an inquiry to find out just what his status was. There is nothing in the law that requires that the company specifically advise individual employees that as of a certain day they must begin paying union dues or that they must tender [415] their initiation fees, there is no such obligation imposed by the law, but there was an obligation on Mr. Scheuermann to make inquiry because he had plenty of knowledge that the union shop contract either had been signed, or was about to be signed. But instead of doing what a reasonable man would have done, Mr. Scheu-

ermann pretended to be ignorant of the situation and he thought he would let matters ride along without doing anything about it, and on the 32nd day, after the contract was signed, he was suddenly faced with the situation where the union had demanded his discharge and he had not made any effort to tender initiation fees or dues.

Now, if it is argued that there was a tender of dues by Mr. Ollis during the period during the 30 day period after the contract was signed, and that such tender was made in Mr. Scheuermann's presence, that again is beside the point because it was not a proper tender. If it is argued that no tender was necessary because Mr. Ollis' dues, with respect to the union, were rejected, we point out that the offer was not made on behalf of Scheuermann and that it was not a proper tender because it was a tender of only dues and not of dues and initiation fees which the law requires. So there was no tender, no attempt by Scheuermann or by Ollis on his behalf to comply with the requirements of the law.

When Mr. Scheuermann learned that he was discharged, he wanted to do something about it, which is a reasonable thing [415] but it was too late and any tender that he might have made after he was discharged has nothing to do with this case. A tender after the discharge was accomplished is not a good tender and if in effect he did attempt to offer his dues and initiation fees either to Mr. Dormann or to Mr. Scott in his visits to the union office, it was then too late, he was discharged. He would have to obtain new employment and he could not

seek employment as a new employee. He was trying to remedy something which was irremediable, he had been discharged, he had failed in his obligation under the law and the one way he could remedy it would be for the union to voluntarily waive the requirement. If it didn't do so, that is a matter of his own concern. There was nothing under the Act which required it to waive the requirements imposed by Section 8(b)3, rather, Section 8(a)3.

Now, the next witness, Mr. Ollis, also knew of the union shop. He knew what it meant. He knew about a union shop contract; he worked under them and he knew that about a union shop contract at the Westinghouse plant when he made his dues tender, if indeed, he did make one. Mr. Ollis knew there was a union shop in the plant, that he had to belong to the union in order to retain the job. He testified that in the presence of Mr. Scheuermann, he did make an offer of his dues.

Assuming that to be the truth, it was still only an offer of dues and not an offer of initiation fees and dues which [416] the law requires.

Furthermore, Mr. Ollis testified that he made that tender after severe prodding. Somebody had irritated him and made him mad because they called him a free rider, or something of the sort, and he said they were kidding him at that time. So, it is not at all clear from the testimony whether he made the offer in good faith, or whether he was just kidding.

So, the testimony of Mr. Ollis does not add very much to what Mr. Scheuermann had to say except

to verify to these two men as well as the remainder of the plant that the contract had gone into effect pursuant to the two elections, and that it was necessary to be a member of the union in order to work in the plant. It was well known by both of them, as well as by everybody else, and yet, no attempt was made by either to make a proper offer of dues and initiation fees with—on his own behalf or behalf of others on behalf of both of them.

The next witness, a Mrs. Chloe Andersen, testified that she listened in on a conversation between Mr. Gorham, union business agent, and certain supervisors. And that in the course of that conversation, Mr. Gorham said, "Now that the contract is pretty well buttoned up, I want you to get rid of certain men." And she said that he listed four men. She said that Mr. Gorham left the meeting shortly thereafter and that Goodenough who was among those present stated that Mr. Gorham had been a good boy about signing the contract and the [417] least they could do to comply with his wishes about getting rid of individuals.

Well now, that testimony is inherently improbable because the contract was more than a month away from signing at that time, and it was well known to the employees in the plant. As a matter of fact, one of the latter witnesses, Mr. King, testified here this morning that there was a notice on the bulletin board of the union meeting to ratify the contract in early October. So the testimony of Mrs. Andersen is just inherently improbable that anything had been promised to Mr. Gorham because

the contract was more than a month away from signing. But if such a conversation took place, she herself later testified to the effect that they discussed the four individuals, does not amount to a determination at that time by the Company that they were going to discharge anybody pursuant to the union's request.

All she said was that they talked about these four individuals and that they mentioned that Mr. Marovich was not a competent worker and that somebody asked what dissatisfaction they had had. Her testimony does not relate to any reasonable excuse for discharging either individual, that somebody simply mentioned those names. She further testified that Mr. Scheuermann was barely mentioned in the conversation.

The later testimony developed by the General Counsel's witness shows that the two individuals that Mrs. Andersen [418] testified were to be discharged are still working for the Company, and one of them received a promotion and got a pay raise at 14 cents an hour.

The testimony of Mrs. Andersen does not show that the Company had any knowledge of any grievance, or dissatisfaction, or grudge that the I.A.M. may have had against these four individuals. Her testimony does not prove in any respect that the Company knew that these employees had expressed opposition to the administration of this union, or that the Company knew that these individuals had expressed a preference for the I.W.W. Union, or that the Company knew that these individuals had

criticized Local 504. There was nothing in her testimony which indicated that the Company had any knowledge of what the union had against these four men, if they had anything against them.

Her testimony does not show that the union did not have some justifiable reason under the law to ask for the discharge of these people, but above all it is clear from the testimony here, that there was no contract in force at that time when Mrs. Andersen complained this meeting took place. It is clear from the evidence adduced here that the contract had expired prior to the election and that there wasn't any contract in force by which the union could ask for the discharge of these individuals on any basis.

With respect to the individuals King and Pachorik, Mrs. [419] Andersen's testimony was limited to a couple of questions asked by a couple of people in this meeting, about what there was wrong with King or Pachorik. There is nothing in her testimony which indicates any dissatisfaction by the Company with these two individuals, or any decision by any supervisor of the Company to get rid of them on any grounds.

All of Mrs. Andersen's testimony on cross examination showed that she had very little, if anything, to do with many of the individuals whom she asserts were in this meeting. She stated that a Mr. Culbertson was in the meeting, but on cross-examination she stated that on at least two occasions while the meeting was going on, she left her room and her desk to go over to Mr. Culbertson's room to

talk to him and on direct she testified that he was in the meeting. She stated that was the reason she passed by the door a couple of times to look in and see who was there. Yet, the testimony in her cross and direct examination are absolutely contradictory.

Now, with respect to the testimony of Mr. Pachorik, it is clear that Mr. Pachorik is still employed by the Company in the same job that he has been in for four years. He was employed, of course, by Hendy prior to his employment by Westinghouse, but during his time with Westinghouse, he has been employed on the same job. He testified that he was told by Mr. Shields that he was going to be terminated, but, as well as [420] the day can be determined, it appears to be two or three months after this meeting that Mrs. Andersen testified to.

And further, it appeared that the question of Mr. Pachorik's termination came up at that time when a great many individuals were laid off for lack of work. So there is nothing in the testimony of Mr. Pachorik to substantiate any of the allegations of this Complaint or nothing in his testimony to show that the Company even considered his discharge, or that Mr. Shields talked to him about a possible termination. For any of the reasons alleged in the Complaint, there is nothing to indicate that the Company had any knowledge that Mr. Pachorik had expressed any opposition to the administration of the union, or that he had expressed a preference for the I.W.W. Union, that he had criticized this union in any respect.

None of those things has been related to the Company in any way. Mr. Pachorik didn't even tell the

Company about his talks with Mr. Shields, Mr. Buckingham, or Mr. Kelly at the time they mentioned his possible termination, so there is nothing in his testimony whatsoever, to relate to the Company by way of actual knowledge or notice by him telling them.

So even accepting Mr. Pachorik's testimony as entirely true, there is nothing in it which would support the allegations of the Complaint. Whether or not he discussed the matter or argued with Mr. Schwartz, the union's shop steward, is completely immaterial so far as the case against the Company [421] is concerned, because there is no proof that the Company had knowledge of any of those things.

And the same might be said of Mr. King, except in one respect. Mr. King did bring the issue of his vacation, according to his testimony, to the attention of Mr. Goodenough, but that doesn't prove anything. It simply proves that the union and the Company agreed to the interpretation of the contract in the commutations of vacations, but everybody else but Mr. King liked the idea, so he complained. It does show his difference of opinion with the union; other than that, it has nothing to do with this case. It was simply that he felt he should receive more vacation than he actually got. There was no criticism of the union implied there. The union agreed with the Company's interpretation of the contract and acceded it.

There was one other thing that is in Mr. King's testimony that I think is quite important here, and

that is that typed copies of the contract were in the possession of the stewards after the first contract had been negotiated. I think the testimony here and the General Counsel's case showed that typed copies also were in the hands of stewards after the current contract was negotiated. So it shows a consistency in the practice there that there was no attempt to hide anything about the contract. It was simply the usual customary manner of doing things.

Mr. King also testified that there were many individuals [422] who were critical of the union in many respects and that there were many individuals still in the union who are critical of it and are sympathetic to the old Lodge 68, which was the predecessor of Local 504.

We cannot assume an unfair labor practice on the basis of differences of opinion, nor misunderstanding within the union. Those are to be expected in normal human relationships. The fact that there were differences of opinions between some of these individuals and one and another of the union has nothing to do with the case because there is not proved by this evidence to be within the knowledge of the Company and therefore, there can not be evidence to support an unfair labor practice finding against the Company.

Mr. Marovich was a witness also. It was shown in the testimony that Mr. Marovich was laid off during a period when a great many employees were laid off for lack of work. Mr. Marovich apparently felt he was laid off improperly. I don't know whether he said it was out of seniority or not, but

he felt it improper to lay him off despite the fact they were laying off hundreds of other employees. But it is not shown here that Mr. Marovich was laid off for any reason which might be an unfair labor practice. It is not shown that there was any intention or any motivation of the Company in his termination or layoff having to do with the violation of the Act asserted in the Complaint. There is nothing showing that the [423] Company intended or was motivated by a desire to discriminate against Mr. Marovich in any way.

It is true that his termination or layoff occurred eleven days after the conversation with—which Mrs. Andersen asserted she heard, but that coincidence in time does not prove anything because there is no evidence other than that flimsy coincidence.

To connect in any way the termination of Mr. Marovich with any activity of the union and the mere coincidence of time is insufficient proof of the allegations contained in the Complaint, for there is no proof that the Company knew that Mr. Marovich had expressed opposition to the administration of the union or had expressed a preferral to the I.W.W. union, or had criticized the union.

On the other hand, it was shown in this testimony that Mr. Marovich had a reputation for running around the plant selling lottery tickets. His activities in 1944 or in 1946 are completely immaterial to this case for they occurred prior to the time Westinghouse took over this plant and there is no proof that Westinghouse had any knowledge of what he had done or his relation to the union on those dates.

There is no proof whatsoever, except for this alleged conversation that Mrs. Andersen said she overheard, that the union at that time requested that Mr. Marovich be laid off, or disciplined, or discharged, or anything of the type. Even on the General Counsel's case, it is clear Mr. Marovich was [424] laid off for cause during a period when a great many people were laid off, and that alone is not sufficient to support an unfair labor charge.

Now, with respect to Mr. Scheuermann, the evidence does show that a request was made by the union to discharge Mr. Scheuermann.

In the letters in evidence, there is no such formal request shown for the discharge of Mr. Marovich. I think that the distinction between the two is quite pertinent, but Mr. Scheuermann's case, of course, is quite different from the case of Mr. Marovich, for Mr. Scheuermann admittedly was discharged pursuant to the union shop contract and had made no attempt to comply with the requirements of that contract and requirements of the law.

I think that completes my motion, or rather, my argument in support of my motion or motions.

Mr. McGraw: I, of course, have some motions to dismiss, Mr. Trial Examiner.

Trial Examiner Parkes: All right.

Mr. McGraw: Respondent Union moves to dismiss the Complaint in its entirety, or as an alternate, the Complaint against the union and further alternate, the Complaints against the individuals involved, namely, Floyd King, Charles Pachorik, Marovich, and Scheuermann. And that it is our

intent that the motion be so interpreted that each might be severed from [425] the other because of their independent reference to these individuals in the Complaint.

Our grounds in support of the several motions to dismiss are, briefly: One, because the Amended Complaint brought in new matter that has not and can not be related to the original charge; two, that the Complaint when it was amended was unsupported by a proper and legal charge; three, that the first amended charges introduced were illegally accepted by the regional director because of the express provisions of the law; four, General Counsel has not proved his original case; and five, that General Counsel has not proved any of the supposedly derivative cases that have been introduced here as it brought in an entirely new set of facts.

Now, I think frankly, that any argument concerning motions to dismiss needs to start with the recognition of the fact that we do have two entirely different sets of facts to consider.

One deals, and that is the Original Charge and Complaint, with the termination of Scheuermann, and the other is, more or less, a spider web which grows out of the testimony of the lady at the key hall, and the particular spider web has not been related in any particular way to the first instance.

Now, it is quite clear from the Act, it is both in Section 8(a)3 and also in the language used in 8(b)2, that there is some obligation to tender the periodic dues and initiation [426] fees uniformly required as a condition of acquiring or retaining

membership. And so General Counsel had the burden of proof to show that such tender was made and he has failed miserably in doing this.

Two, that he had a duty to show that this tender, if made, was made at a reasonable and proper time. Now certainly, it would be an improper time if it occurred before the union had been authorized by the result of an election, to negotiate a union shop agreement and the record is crystal clear that no such offer was made prior to the election involving the union shop on August 25, 1949, when it became common knowledge tht the union had won this union authority election. That would be the very earliest that any offer or tender would be proper and would have any bearing on Counsel's case. It still, however, wouldn't be, shall we say, legally correct and complete until September 7, the day of the certification, and yet the facts are that there is no evidence to show that any offer of tender was made at that time.

Then we have the period of time between the date of certification, September 7, 1949, and the date of the termination of Mr. Scheuermann. Mr. Scheuermann's own testimony conclusively shows that no tender was made of any kind to anybody during the critical period involved, and in fact, the only thing that might constitute an offer or tender on the part of Mr. Scheuermann occurred after he had gone to the National [427] Labor Relations Board and that they advised him he better make a tender, and went back to the union office on or about November 14, to make such a tender. So it

appears thus far that the General Counsel's case depends essentially, so far as represents to Scheuermann, on events after he had been terminated.

Now, concerning these other persons, Pachorik, King, and Marovich, we have lots of material here relevant, but all of it is heresay and none of it goes to prove that, one, the union in the first instance asked for the discharge or, two, that they were entitled to do so, and certainly, it was demonstrated that even if the union had asked for the discharge, that the Company didn't agree with it and they didn't discharge any of the people involved at that time for the reasons alleged by General Counsel.

In fact, they continued the employment of Scheuermann beyond that date. In fact, they continued the employment of Marovich beyond that date. The General Counsel has failed to prove that any person at any time was terminated because of his hostility towards, or his activity on behalf of any labor organization. It might be assumed, of course, Scheuermann was terminated at the request of the union. We have, certainly, written letters in evidence, and that is the only one that shows any connection at all between the Company's action and the union's request. It still remains to be shown as to what extent the union's request actually had to do with the termination [428] of Scheuermann, assuming that that was the reason that Scheuermann was terminated; we come up against the fact that there is no evidence to show that Scheuermann carried out his responsibilities.

I think, frankly, the charge as reflects, too, on

Floyd King and Pachorik are ridiculous and I think it is rather a tragedy on justice that they were even brought in and we have wasted time discussing it.

I think the Trial Examiner is well aware of the merits as to the value of the evidence offered and that certainly, the very fact that these people were continued in their employment disproves any allegations or insinuations, or conclusions that the General Counsel would like to draw from this spider web that began with part of a conversation supposedly overheard in the course of business. I don't believe we need to belabor the point. I think the facts are quite clear and that without regards to the right or wrong, shall we say, concerning amendments to the Complaint and charges, the bald fact is that General Counsel has not proven any of his charges and so the case should be dismissed. [429]

* * *

B. H. GOODENOUGH

resumed the stand and was examined and testified further as follows:

Direct Examination

By Mr. Holmes:

* * *

Q. When did Westinghouse take over the plant from the Hendy Iron Works?

A. March 1st, 1947.

Q. Do you know when the collective bargaining agreement was in effect after that date?

(Testimony of B. H. Goodenough.)

A. I believe the date of the contract which was in effect when [441] I came to the coast was May 5th, but I'm not sure of that date, 1947.

Q. Was that contract in effect when you came to the plant? A. It was.

Q. How long did it remain in effect?

A. It remained in effect until it was terminated on March 31, 1949.

Q. Is that the only contract between the date of May, 1947 and March, 1949?

A. With I.A.M., yes.

* * *

Q. Do you know whether that contract contained a closed shop provision? A. It did.

Q. Was that closed shop provision applied by the Company during the length of that contract?

A. All employees hired under the jurisdiction of the I.A.M. understood that provision before they were employed. [442]

Q. Were they required to remain members in that union during their employment with Westinghouse? A. They were.

Q. You said the contract expired on March 31, 1949? A. That is correct.

Q. What terms and conditions were maintained in effect after that date and prior to October 10, 1949?

A. In general, the provisions of wages, hours, and working conditions were continued after the termination until the contract was signed.

(Testimony of B. H. Goodenough.)

Q. Were there any provisions of that expired contract which were not maintained in force and effect during the period from March 31, to October 10?

A. There were.

Q. What provisions were they?

A. The closed shop provision was not applied from the termination date, nor was the provision in the contract which called for compulsory arbitration.

Q. Were all other provisions applied to the Company?

A. To all intents and purposes, yes.

Q. Do you recall that a representation election was held in the plant July of 1949?

A. I do.

Q. And that the results were certified shortly after the election? [443]

A. I could.

Q. After those results were certified, did you again have negotiations of a new contract with the union which were certified?

A. We did.

Q. Which unions were certified?

A. The I.A.M., the I.B.E.W., and the Teamsters.

Q. During what period did you negotiate with the I.A.M.?

A. If I recall correctly, we started negotiations in the first week in August; certification was issued, I believe, the 19th of July, and we continued negotiations with all three unions up to and including, I believe, the last week in September. We met three times a week almost regularly with each of the three unions.

(Testimony of B. H. Goodenough.)

Q. That is, each individually, or all three together?

A. The majority of times they were separate meetings, but there were several occasions during the month of September in particular. There were certain paragraphs or clauses in the contract which management wanted to be uniform in all three of the contracts and, at that time, we had joint meetings with the Teamsters, the I.B.E.W., and the I.A.M. represented.

Q. You say regular meetings, what do you mean by that?

A. Yes, we had a regular schedule of meetings, two meetings each week, two hours at each meeting for each of the unions.

Q. You were meeting both in the morning and in the afternoon? [444]

A. Morning and afternoon.

Q. Was a contract eventually agreed on?

A. It was.

Q. Will you state the date?

A. The contract was signed on October 10, 1949.

Q. Signed by whom?

A. The contract was signed by each of the unions. There was a contract signed with the I.A.M. on that date, with the I.B.E.W. on that date, and with the Teamsters on that date. [445]

* * *

Q. Now, Mr. Goodenough, during the course of the negotiations, was agreement reached on different

(Testimony of B. H. Goodenough.)

sections of this contract at different times or was the entire contract agreed to at one time, that is, agreement reached on the entire document at one time?

A. Tentative agreement was reached on certain paragraphs as we went through our negotiations from July 19 to the latter part of September with an multiple understanding between both parties, that any tentative agreement to any said clause and paragraph might be rephrased in consistency with other clauses that might be related.

Q. I will direct your attention to Section 2, which appears on Page 2 of the document and ask you the approximate date which the agreement or tentative agreement was reached on that section?

A. I am sure that it was in the last two weeks of the negotiations. It was one of the last items set up.

Q. Was it subsequent to the certification by the National Labor Relations Board of the I.A.M. as being eligible to enter a union shop contract?

A. Most definitely.

Q. About how long after such certification? I think that is identified in the record as September 7. [451]

A. It was at least two weeks after September 7, before we reached agreement because I remember detailed discussions in regard to that clause. We could not reach agreement as to the phraseology.

Q. When was the final agreement reached with

(Testimony of B. H. Goodenough.)

the I.A.M. on the entire document subject to ratification by the union?

A. I am not sure of the date, Mr. Holmes, but I think that it was around September 25 or 26.

Q. After agreement had been reached on this contract, were any steps taken to acquaint the supervisory staff at the plant with the contract?

A. There were.

Q. What steps were taken in that regard?

A. Mr. Everette, who was my assistant, sat with me on all negotiations with the three unions and I divided the supervisors into two groups and we held a training course with those supervisors and reviewed every paragraph in the contract with them.

Q. Can you state the approximate dates of these training courses?

A. The contract was signed on the tenth and I think they started on the following Monday, the beginning of the following week.

Q. How many classes were there?

A. Each of us held three sessions with our respective groups [452] of supervisors.

Q. How many sessions did a particular supervisor attend?

A. Each supervisor attended three sessions.

Q. Were the supervisors furnished with the copies of the agreement? A. They were.

Q. What kind of copies were they?

A. Hectograph copies.

(Testimony of B. H. Goodenough.)

Q. When was it in booklet form, actually received from the printer by you?

A. I don't remember the date.

Q. Well, did you have it immediately after the contract was signed?

A. Well, I would say it was several weeks after the contract was signed.

Q. In the meantime, what copies did you use?

A. We used the hectographed copies.

Q. What supervisors had them, not by name, but by classification?

A. All supervisors in the plant.

Q. And that included what titles?

A. Well, that included everything from the rank of assistant foreman up to the manager of the establishment.

Q. Are assistant foremen with the margin?

A. They are not. [453]

Q. Do you know whether any shop steward had copies of the contract?

A. I furnished to the union enough copies for distribution to all stewards. [454]

* * *

A. The maximum hourly paid employees that we had was 1,956.

Q. When was that maximum reached?

A. That was reached in the middle of March, 1949.

Q. How many employees were there at the time of the representation election?

A. I would say 1,400.

(Testimony of B. H. Goodenough.)

Q. From that date in July when the representation election was held until the end of 1949, did the total of employees increase or decrease?

A. Decreased, appreciably.

Q. To about how many?

A. We went to a low on our hourly roll of 872 employees. That is more than a thousand below our maximum.

Q. When was the low point reached?

A. We got in the low point in the middle of December, I believe, and stayed there for the next two months, three months before we started picking up again.

Q. You started to pick up about when?

A. February or March.

Q. February, 1950? A. That is right.

Q. During the time that the total employment was diminishing, were workers laid off from all departments or from particular departments?

A. From all departments. [455]

Q. Layoffs were general, then, in the plant?

A. Correct.

Q. During the period that there was no contract in force with a union, how was the layoff determined?

A. We had, as previously stated, indicated that we would maintain the wages, hours, and working conditions which were in effect when the contract was terminated. We followed the old seniority provision of the contract.

Q. Was it a straight seniority provision?

(Testimony of B. H. Goodenough.)

A. Seniority and ability.

Q. And how did you apply that?

A. Well, during the early part of the layoff, we followed pretty closely strict seniority. As it got down to a minimum number of employees, we gave a great deal more attention to the employee's ability to do the job as compared to other employees on the roll. And in the last two or three months of the layoff, considerable attention was focused on relative abilities of employees as well as their seniority.

Q. Did you lay off employees with more seniority in order to retain employees with less seniority who you considered to have more ability?

A. We did.

Q. In more than one case?

A. Several cases in all of the unions.

Q. You say all of the unions, by that it would be understood [456] you were referring to the I.B.E.W. unit, the Teamsters unit, and so on?

A. That is right.

Q. I will show you a letter that is in evidence as General Counsel's Exhibit No. 6 and ask you when you first saw it?

A. On November 11, 1949.

Q. Where did you first see it?

A. In my office.

Q. How did you receive it?

A. Mr. Gorham handed it to me in an envelope.

Q. What was Mr. Gorham in your office for, do you recall?

A. He was there with Mr. Schwartz, the chief steward, to discuss a grievance.

(Testimony of B. H. Goodenough.)

Q. Did you discuss the grievance?

A. We did.

Q. Did you read this letter before the grievance was discussed or afterwards? A. Before.

Q. Did you ask Mr. Gorham any questions about the individuals named in the letter?

A. I did.

Q. What did you ask him about those individuals?

A. I asked Mr. Gorham if those individuals had been given the same opportunity to join the union as all other individuals under the jurisdiction of the I.A.M. [457]

Q. And what did he say?

A. He said they had.

Q. Did you ask him about—did you ask him any other questions about the individuals?

A. Yes, I did. I asked him if the request was in compliance with section two of the agreement between I.A.M. and the Company.

Q. That is the agreement that you have identified which is marked as Company's Exhibit No. 2 for identification? A. That is right.

Q. And what did he say in answer to your question?

A. He said it was in compliance with the provisions of that section.

Q. Did you ask him any other questions about individuals?

A. Yes, I asked him if he felt it was in com-

(Testimony of B. H. Goodenough.)

pliance with the International—with the National Labor Relations Act as amended.

Q. And what did he say to that?

A. He said it was.

Q. Did you make any other questions with respect to anything else about it?

A. I did, I asked him if he would verify that these employees had been given the same opportunity as other employees to join the union, in writing.

Q. I will show you a letter dated November 15, 1949, on the [458] letterhead of International Association of Machinists, District Lodge 39—rather 93.

I will ask you, Mr. Reporter, to mark this as Respondent Company's Exhibit No. 3 for identification.

(Whereupon the document above referred to was marked Company's Exhibit No. 3 for identification.)

Q. Have you seen that letter before?

A. I have.

Q. Did you receive that letter? A. I did.

Q. Was that letter received in reply to your oral request to Mr. Gorham that you just represented?

A. It was.

Mr. Holmes: Do you want to show that to Mr. Bamford and Mr. McGraw?

I will offer that letter as Company's Exhibit No. 3 and request that it be withdrawn and a copy substituted.

Trial Examiner Parkes: Are there any objections?

(Testimony of B. H. Goodenough.)

Mr Bamford: No objection.

Mr. McGraw: No objection.

Trial Examiner Parkes: Company's Exhibit No. 3 has been received in evidence.

(Thereupon the document above referred to was marked Company's Exhibit No. 3 for identification and received in evidence.) [459]

* * *

RESPONDENT WESTINGHOUSE CORP.

EXHIBIT No. 3

(Copy)

November 15, 1949.

Mr. B. H. Goodenough
Mgr. Industrial Relations
Westinghouse Electric Corp.
Sunnyvale, California

Dear Mr. Goodenough:

In answer to your question regarding my letter to you of November 11, 1949, please be advised that all of those listed in this letter for termination were given the same opportunity to become members of our organization as anyone else working in your plant at Sunnyvale.

Very truly yours,

F. W. GORHAM,

Asst. Business Representative.

FWG:as

Received in evidence September 12, 1950.

(Testimony of B. H. Goodenough.)

Q. (By Mr. Holmes): Can you explain the deletion of the name, Louis Gennai? On the original it has been crossed out and an arrow had been drawn to the lower part of the letter where it reads, "Deletion o.k.'d by C. Schwartz, 11/49." Can you explain that?

A. I can. At this meeting which Mr. Gorham and Mr. Schwartz attended in my office, also Mr. McAuliffe, who is the mechanical superintendent, and the grievance in question came from his department; following the grievance meeting I asked Mr. McAuliffe to stay in my office for a minute and I reviewed them with him and suggested that he go back into his department out in the shop, contact the individuals referred to in this letter and notify them of their termination under section two of the agreement.

I further instructed him that if there was any question on their part he should show them the letter, which they were entitled to see, as well as the provision in the contract under which this letter came.

Mr. McAuliffe left my office and within an hour or so after that he called me and said that he had contacted Mr. Gennai. Mr. Gennai told him that two or three days prior to this he had offered his union dues to the steward in the [460] section in which he worked and the steward had told him that he would see him the next day. The steward, according to Mr. Gennai, became ill and did not appear at work for several days. Mr. Gennaie explained that he

(Testimony of B. H. Goodenough.)

did not know to whom he should go and had made an offer for union dues to his steward and thought he was clear on the thing.

I suggested that Mr. McAuliffe discuss the matter with Mr. Schwartz, the chief steward for the I.A.M., and if Mr. Schwartz would confirm such statement by Mr. Gennai and agreed to it, as far as I was concerned the Company would approve the deletion.

Later, Mr. McAuliffe called me and said he had discussed with Mr. Schwartz and that Mr. Schwartz had deleted Gennai's name and had initialed the letter indicating the deletion had been made. [461]

* * *

Q. Now, what action was taken, if any, with respect to Cleveland and Norris, that is also mentioned in the letter?

A. Upon investigation, it was found that Cleveland and Norris, who had been a machinist at the plant, was on what we call the disability roll and at the time of this incident he was, to the best of my recollection, in Texas.

Q. How long had he been away from the plant?

A. I don't recall. [462]

Q. Did he ever come back?

A. I don't recall. He did not.

Q. Was any action taken with respect to him?

A. No.

Q. When did you first see Clyde Scheuermann that you had a conversation with him?

A. The first time I ever talked to Clyde Scheu-

(Testimony of B. H. Goodenough.)

ermann was at the National Labor Relations Board office at the representation hearings in the jurisdiction side—jurisdiction dispute, I believe, in March of 1949.

* * *

Q. Then, when did you next have a conversation with him?

A. On the Monday, I believe, following November the 11th.

Q. Where did you see him at that time?

A. In my office.

Q. Did he come to see you or did you call him up?

A. He came to see me. [463]

Q. Do you know whether it was morning or afternoon?

A. I believe it was in the morning.

Q. Do you recall the conversation?

A. Yes, I do.

Q. Would you state it as well as you can remember it?

A. He came into the office and said that he assumed that I knew why he was there. I told him that I assumed it was merely termination, and he confirmed that. He then asked if there was anything the Company could do. I said that we had, in our opinion, complied with the terms of section two of the agreement and that I didn't see that any change could be made. He indicated to me that he had been to the National Labor Relations Board and that they had suggested that he see the union

(Testimony of B. H. Goodenough.)

about the matter. I told him that inasmuch as the Board had recommended that he see the union, that I suggested that he follow their instructions, and he then left my office following that conversation.

Q. Did he, at that time, tell you that he had been expelled from the I.A.M. and fined?

A. I believe he did, yes.

Q. Had he ever told you that before?

A. No, he had not.

Q. Had anybody told you that before?

A. No one that I recall; no one had ever told me that.

Q. Had you received any communication from the union to that [464] effect? A. I had not.

Q. Did you know, other than the information you received in the letter from Mr. Gorham, whether or not Mr. Scheuermann was a non-union I.A.M. at that time?

A. I did not know whether he was a member at that time or not.

Q. On November 11, did you know whether or not he was a member of the I.A.M. other than this information in Mr. Gorham's letter?

A. I did not.

Q. Did Mr. Scheuermann tell you on that occasion when he came to your office that he was a member of the I.A.M.? A. At that time?

Q. Yes. A. No, he did not.

Q. Did he tell you that he had offered his dues and initiation fees to the I.A.M.?

A. He did not.

(Testimony of B. H. Goodenough.)

Q. Did he tell you that he didn't think it was square, that he had no way of knowing about the agreement?

A. I recall that he said something to the effect that he did not know that an agreement was in effect.

Q. Did you show him the agreement?

A. I did. [465]

Q. Did he read it?

A. If I am not mistaken, Mr. Scheuermann asked me for a copy of the agreement on that day and I asked my secretary to get one for him. I believe he folded it up and put it in the pocket without reference to it. I am not sure about that.

Q. Did he tell you he was going to see somebody at the union?

A. He told me he was going down to the union, yes.

Q. Did you have another conversation with him?

A. Yes, when he left at that time I asked him if when he had checked with the union if he would report back to me and let me know what happened. He came back after he had talked to the union. [466]

* * *

Q. Did Mr. Scheuermann ever come back to see you again?

A. No, I don't believe I ever saw Mr. Scheuermann again until the hearing started.

Q. When an employee is discharged, what is the usual custom with respect to notice to him?

(Testimony of B. H. Goodenough.)

A. When an employee is discharged for cause there is no notice; he is terminated at that time.

Q. And what do you mean by "cause"?

A. For infraction of plant rules and Company rules.

Q. What if it is for some other reason?

A. Specifically, in regard to union security requests, there is a difference because of shifts. On the first shift, of the day shift, if you receive a notification from the union of the termination of an employee, we as a rule give the employee notice during the shift and his employment terminates at the end of that shift, regardless of when the notice is received during the day, so long as it is during his working hours.

If the notice involves an employee on the second or third shift such notice is usually given at the beginning of the shift because we receive it during the day shift and the employee [468] is usually given the opportunity to work out the balance of that shift.

Q. Is the checking in of tools customarily taken care of during that balance of the night shift?

A. Well, it is rather difficult to check in tools at night. They are usually permitted to come in the next day to check in their tools.

Q. Had the Company ever discharged under a union security clause prior to the discharge of Mr. Scheuermann?

A. Yes, several people were terminated under the old contract closed shop agreement.

(Testimony of B. H. Goodenough.)

Q. Was written notice received in the union on such occasions? A. By the union?

Q. From the union?

A. From the union, in all such cases.

Q. Do you know a Mrs. Chloe Andersen?

A. I do now.

Q. Did you know her prior to this hearing when she appeared as a witness?

A. To the best of my knowledge, I had never seen her before.

Q. Had you ever worked with her or had she ever worked for you? A. No.

Q. Had you ever had a conversation with her?

A. To the best of my knowledge, no; unless it was by telephone. [469]

Q. Do you know of a mezzanine office in the building where Mr. McAuliffe works?

A. I know one is there.

Q. Is that building 41 there? A. Correct.

Q. Do you know of a mezzanine office there?

A. I do.

Q. You heard Mrs. Andersen's testimony that she worked for some months in such a mezzanine office? A. I did.

Q. Have you been to that office?

A. I never had.

Q. Are you out in the plant in building 41 frequently or infrequently? A. Infrequently.

Q. For what purposes do you go out in the building, 41?

A. On some occasions, the foreman and super-

(Testimony of B. H. Goodenough.)

intendents in the building have asked me to come out there to discuss grievances in the plant which come to my level, and agreement procedure on other occasions. I have gone into the building for training meetings with the supervisors. On other occasions I have gone out to the building to discuss matters with Mr. Schwartz or with the foremen or supervisors in the building.

Q. On these occasions, except for the meetings with supervisors, did you customarily stay out there very long? [470] A. No.

Q. For about how long would your visits last?

A. Oh, five or ten minutes.

Q. How frequently would they occur during the past two years?

A. I would say I was in the building 41, on an average of once a month, perhaps.

Q. During the last two years? A. Right.

Q. Are you familiar with Mr. McAuliffe's office in that building? A. I am.

Q. Is there a second office near his?

A. Yes, there is.

Q. And is there an office next to that?

A. There is.

Q. I will give you a blank sheet of paper and ask you if you can draw a diagram showing the respective locations of those three offices.

(Thereupon the witness was handed a blank sheet of paper and drew the above mentioned diagram.)

(Testimony of B. H. Goodenough.)

Q. Who is Mr. Culbertson?

A. Mr. Culbertson is staff assistant to the mechanical superintendent, Mr. McAuliffe.

Mr. Holmes: I will ask the reporter to mark this diagram [471] that Mr. Goodenough has drawn as Company's Exhibit No. 4 for identification.

(Thereupon the document above referred to was marked Company's Exhibit No. 4, for identification.)

Mr. Bamford: May I ask a question. I am a little bit perplexed. Is this the mezzanine office or is this an office on the main floor of Building 41?

The Witness: It is on the first floor.

Mr. Holmes: He stated he had never been in the mezzanine office.

Mr. Bamford: That is what I wanted to know, I was a bit uncertain about it.

Mr. Holmes: Do you wish to see this before I question him about it?

Q. (By Mr. Holmes): What is the customary entrance to Mr. McAuliffe's office, is it from the secretary's office or from the hall?

A. As far as I'm concerned, it's from the hall.

Q. Do you know whether people ordinarily go directly through the hall or through the secretary's office?

A. The majority of meetings, which have been few that I have attended in Mr. McAuliffe's office, I believe we have gone in the office door from the hall.

(Testimony of B. H. Goodenough.)

Q. Have you ever gone through the secretary's office into Mr. McAuliffe's office for a meeting? [472]

A. I can recall only one occasion, Mr. Holmes. I was in a meeting in Mr. Culbertson's office and we adjourned and went into Mr. McAuliffe's office and had to go through the secretary's office.

Q. Is that the only time that you can recall?

A. That is the only time that I recall, yes.

Q. Is it necessary for a secretary in the office indicated on the diagram to pass the door of Mr. McAuliffe's office going from her office to Mr. Culbertson's office.

A. I would say she would have to go around this end of her desk. Mr. McAuliffe's office is in front of the desk.

Q. You say she would have to go around the end of the desk and away from Mr. McAuliffe's office in order to pass the door to Mr. Culbertson's office?

A. I remember exactly the desk sits like this and always has been. The secretary sits there, she would have to follow this path.

Mr. Holmes: Would you mark "desk" there where you have drawn this small rectangle.

Mr. Bamford: Is the round place back of the desk the secretary's chair?

The Witness: That is.

Mr. Bamford: Would you mark "chair" on that.

Q. (By Mr. Holmes): Now, where is this with respect to the working area in Building 41, which direction is the shop? [473]

(Testimony of B. H. Goodenough.)

A. Out this hall, office along here (indicating) and the conference room office, and you come to the working area along here. There is also across from Mr. Auliffe's office, in about this location, a conference room and you may get access to the working area through the shop door which goes out back of the conference room.

Q. You indicated to the left of this diagram as a means of going to the shop?

A. I would say this direction (indicating) which would be to your right.

Q. Now, do you recall during the last five months of 1949, being at a meeting in Mr. McAuliffe's office when he was absent?

A. I do.

Q. Can you state about when such a meeting took place?

A. It was when we were having a problem in regard to laying off welders under Sheldon Huffman, who is the welding foreman under Mr. McAuliffe. I would say that it occurred in the month of September.

Q. And can you state the approximate date?

A. No, I can't.

Q. Who was present at this meeting?

A. Well, there were several people who were presently called in and then left and others replaced them. Mr. Buckingham, the superintendent of turbine assembly was there; Sheldon [474] Huffman, the welding foreman, was there; Walley Harrison, foreman of tool cribs; and mechanical

(Testimony of B. H. Goodenough.)

department, maintenance, Tommy Shields, foreman; I believe Mr. Gorham was there, and I think that Mr. Schwartz and perhaps Mr. Sohm, both of whom are stewards for the I.A.M.; and Mr. Clark was there for a while. [475]

* * *

A. If I recall, the meeting was called originally by Mr. Buckingham, the turbine superintendent, who was acting in Mr. McAuliffe's behalf during his absence, to discuss this question involving only the welders under Mr. McAuliffe's supervision when we started the meeting, the question came up in regard to transferring the welders from Mr. Huffman's section over to Building 61 under Mr. Ghiorso and, at that time, we called Mr. Clark and Mr. Ghiorso. They were not there when the meeting started.

Q. What subjects were discussed other than this layoff of welders?

A. Well, the whole plant was going down rapidly, as far as production schedules were concerned, and we were having layoffs every week in the majority of departments under Mr. McAuliffe's supervision as well as other sections in the plant. It was getting to the place where the problem of seniority versus ability was quite acute and we were reviewing the seniority lists in regard to contemplated layoffs in other sections of [476] the plant other than the welding department.

Q. Was that problem discussed with respect to any individuals? A. In this meeting?

(Testimony of B. H. Goodenough.)

Q. Yes.

A. Yes, it was discussed in regard to specific individuals.

Q. What individuals?

A. I recall two specifically: Mr. Marovich and a man by the name of Ashton.

Q. Anybody else?

A. No, I don't recall anyone else discussed at that time.

Q. Was Mr. Clyde Scheuermann discussed?

A. No.

Q. Was his name mentioned? A. No.

Q. Was Charles "Pat" Pachorik mentioned?

A. I don't believe he was.

Q. Was his name mentioned at all in the meeting? A. No.

Q. What was said with respect to Mr. Marovich and Mr. Ashton, and who said it?

A. Tommy Shields had additional layoffs coming up in his section and we took the seniority list which showed all the employees in the mechanical section under the various department heads by seniority. Tommy Shields indicated that he had a certain number of people to lay off and that if he laid them [477] off in the manner in which he felt was advisable, he would not be able to follow seniority. He referred then to the fact that he did not feel Marovich and Ashton were carrying their share of the load in the department and that in the next layoff which came in his department, they should be included. I remember the conversation

(Testimony of B. H. Goodenough.)

quite specifically because we had been adhering quite strictly to seniority in some of the sections. I said, "I think you fellows should also bear in mind that when you go outside the seniority provisions, you must be certain that the employee is not capably performing his work, because in most of these cases, you can be assured that you will receive a grievance. You must be able to justify your decision."

Q. Was anything else said with respect to those two?

A. Shields said that he felt without a doubt that he would be able to justify his position with the union in both of these instances.

Q. Anything more said in respect to those two individuals? A. Not that I recall.

Q. Did Mr. Gorham request that you get rid of Mr. Marovich? A. No.

Q. Did Mr. Gorham request that you get rid of Mr. Floyd King? A. No.

Q. Did Mr. Gorham request that you get rid of Mr. Pachorik? [478] A. No.

Q. Did Mr. Gorham request that you get rid of Mr. Scheuermann? A. No.

Q. Did Mr. Gorham request that you get rid of anybody? A. No.

Q. Did he make any such similar request?

A. No.

Q. That you lay off, discharge, or terminate any of those named individuals? A. No.

Q. Was the name of Mr. Floyd King mentioned

(Testimony of B. H. Goodenough.)

in that meeting? A. Not at that meeting.

Q. Not by anyone?

A. Not that I know of.

Q. Did Mr. Gorham, in that meeting, say anything about the contract being buttoned up.

A. In September?

Q. This meeting that you discussed.

A. No, because the contract was a long ways from being buttoned up at that time.

Q. Did you say anything about Mr. Gorham having been a good boy in signing the contract?

A. I did not.

Q. Did you say anything about you ought to concede to Mr. [479] Gorham's request because the contract had been completed, or similar to that?

A. No.

Q. Did any spokesman for the union, in that meeting, make any request that any particular individual be discharged or terminated or laid off and gotten rid of? A. Not in that meeting, no.

Q. Was there any decision reached in that meeting with respect to Mr. Ashton and Mr. Marovich?

A. I think the meeting ended pretty much on the vein of the previous testimony in regard to laying off outside of seniority. Telling them that if they did not follow the seniority provisions, that they should be absolutely certain that they had a case in regard to the individual as to his capabilities to perform his job, his performance record, and so forth, because in most of those cases, I felt certain

(Testimony of B. H. Goodenough.)

that they would contemplate grievances. The reason I was so interested in that phase of it at that time, is because we were getting down to a point where the majority of the people on the roll had considerable seniority, regardless of whom we dealt, we had a seniority problem, most of them with two or three years of service.

Q. Were any of the union representatives in that meeting told that you would lay off any particular individuals? A. No, not at that meeting.

Q. Did you attend any other meeting in Mr. McAuliffe's office [480] while Mr. McAuliffe was absent during the last five months of 1949?

A. I don't believe I did, no. [481]

* * *

Q. Did you receive those cards in the normal course of your work. A. I did.

Q. From whom did you receive them?

A. I believe I received these specific cards from Mr. Gorham.

Q. Did he bring them to you personally?

A. He gave them to me at the grievance meeting. The grievance had progressed to the third stage, which is my level on grievance forms.

Q. Was the meeting for the purpose of considering these two grievances? A. It was.

Q. Did you discuss the grievances with Mr. Gorham? A. Yes, sir.

Q. Would you state the subject of the two grievances?

(Testimony of B. H. Goodenough.)

Mr. Bamford: May I see the cards, please, before any further questions?

The Witness: The subject of both grievances was the same, that the two employees had been laid off because of inability to perform the work and laid off outside of seniority and the [483] union had protested the layoff, stating that other employees should be laid off before these.

Q. Did you have these cards before you when you discussed the matter with Mr. Gorham?

A. I did.

Q. Do you recall the approximate date when you discussed it with him?

A. Oh, it was around the 21st or 22nd of September, I think.

Q. I will refer you to your signature at the bottom of the card and ask you if the numerals "9-22" will refresh your recollection?

A. Yes.

Q. Was that the date on which you discussed these two grievances with Mr. Gorham?

A. It was.

Q. Do you recall the discussion that took place?

A. Yes, fairly well.

Q. Where did it take place?

A. It took place in my office.

Q. Would you relate it please?

A. Mr. Gorham and, I believe, Mr. Schwartz, the chief steward, was there. Mr. McAuliffe was there, and Mr. Gorham said——

Q. Was Mr. Shields there?

(Testimony of B. H. Goodenough.)

A. I am not sure. Mr. Gorham said that he felt these two employees were being discriminated against and that the answers [484] which had been put on the grievance form by the immediate supervisor, Mr. Shields, by Mr. McAuliffe, the superintendent, were unsatisfactory answers and that he did not want the termination to take place. That they were employees who had greater seniority than these individuals and who were just as capable of performing the work, they should be retained.

And we discussed the pros and cons of these two individuals as to their ability to perform the job which had been assigned to them, their meeting of production requirements, and since it had come to my level in the grievance procedure, I stated that I felt the statement made by Mr. Shields and Mr. McAuliffe indicated that these employees had been treated properly and terminations would take place; there would be no change in the answers made by Mr. McAuliffe. I then wrote on the grievance form that we had reviewed the grievance with the union and the management's opinion was that proper treatment had been given by the superintendent to these individuals concerned.

If I recall, customary practice is that I give both copies of the form to the business agent of the union and he reviewed them and discussed them for a few minutes with Mr. Schwartz.

Q. In your presence?

A. In my presence, I believe. He signed the grievance forms and returned the management copy

(Testimony of B. H. Goodenough.)

to me and he retained the union copy for himself. [485]

Q. Now, I don't think I quite understand your testimony when you said there were individuals with less seniority retained; is that correct?

A. That is correct.

Q. Whom you felt had better ability to do the work?

A. That is correct.

Trial Examiner Parkes: I think probably he made a slip of the tongue when he made his answer. Would the reporter please read the answer?

(Question read.)

Q. (By Mr. Holmes): In your answer that has just been read back to you, you said something about retaining employees with more seniority; is that what you intended to say, or was it a slip of the tongue?

A. It was a slip of the tongue; employees with less seniority were retained.

Q. Would you re-state again just what you told Mr. Gorham?

A. Mr. Gorham protested on the basis that we were laying these people off improperly. First, that they could perform all the work as well as other employees on the roll who had less seniority than these two individuals had; and, second, that they were satisfactory workmen in regard to their ability to perform the job.

Q. And what did you tell him in reply to that?

A. Well, after a discussion of the merits of

(Testimony of B. H. Goodenough.)

these individuals [486] versus other employees in the same operations, I came to the conclusion that the decision handed down on the grievance form by Mr. Shields and Mr. McAuliffe was correct and that in the management's opinion, after reviewing the case, we felt that the answer submitted at the first two levels of the grievance procedure were correct and should stay.

Q. Did you tell that to Mr. Gorham?

A. I did, and then I wrote that on the grievance form in the third step of the grievance procedure.

Q. Is this sentence appearing above your signature and below the signature of Mr. McAuliffe, is that the sentence that you are referring to?

A. It is.

Q. What did you do after you wrote that there?

A. I handed the form to Mr. Gorham to be discussed with the other union representative present and after some discussion, signed his name, returned the management copy to me and retained the union copy for himself.

Q. What is the check "unsatisfactory" mean?

A. A check mark on "unsatisfactory" in any stage of the grievance procedure means that the union is not satisfied with the answer and would like to carry it to the next level in the grievance procedure.

Q. And what does "satisfactory" mean?

A. "Satisfactory" means that the grievance has been [487] satisfactorily reviewed, as far as both parties are concerned, and closed the case.

(Testimony of B. H. Goodenough.)

Q. Were both of these cases treated in the same way? A. They were.

Q. Do you recognize the signature of Mr. McAuliffe on these two cards? A. I do.

Q. Have you seen it before?

A. Many times.

Q. Have you seen the signature of Mr. Shields before? A. I have.

Q. Do you recognize his signature on the card?

A. I do.

Q. I think you previously stated you had seen the signature of Mr. Schwartz; do you recognize it on this card—or, rather, on these cards?

A. I do.

Q. On the front and back?

A. Yes, that is of each card.

Mr. Holmes: I will offer these two cards in evidence as Company's Exhibit No. 5 and 6, and request that they be withdrawn and copies substituted in their place. Mr. Ashton is No. 5, serial number -00008, and Marovich, No. 6, serial number 00009.

Mr. Bamford: I have no objection to their being admitted [488] in evidence. However, I would like an opportunity to compare the originals with the copies, and I may suggest then that the originals stay in the exhibit. [489]

* * *

Q. Is it true that seniority then accumulated at this plant while Westinghouse has operated, is

(Testimony of B. H. Goodenough.)

added on to seniority accumulated during previous service with the Joshua Hendy works?

A. That is right.

Q. Is seniority acquired at some other Westinghouse plant under some other agreement added on to security or seniority accumulated at this plant?

A. It is not. [490-b]

* * *

B. H. GOODENOUGH

a witness called by and on behalf of the Respondent, having been previously sworn, was recalled, examined and testified as follows:

Direct Examination

(Continued)

By Mr. Holmes:

Q. Mr. Goodenough, I will show you a document which purports to be a copy of an agreement with the International Association of Machinists and ask you if you can identify that as the agreement applicable at the Westinghouse plant prior to March 31, 1949?

A. Yes, that is the agreement under which we operated.

Q. From what date?

A. From some time in April or May of 1947 until March 31, 1949. [494]

* * *

(Testimony of B. H. Goodenough.)

Q. (By Mr. Holmes): Mr. Goodenough, I will show you a document which purports to be the signed copy of an agreement between Westinghouse Electric Corporation, Sunnyvale plant, and District Lodge No. 3, Local 504 of the International Association of Machinists, and ask you if you can identify that as the original signed copy of that agreement?

A. Yes, I think it is.

Q. Was that signed under the circumstances that you related in your testimony yesterday?

A. It was.

Q. Referring now to Section 2 and the date contained therein, it would appear on this agreement that the date is in different ink around the rest of the Section, as though it were not printed at the same time as the rest of the Section. Can you explain that?

A. During the course of negotiations, we ran off various [495] drafts of the contract for negotiating purposes on the mimeograph forms, which are reproducible, and when we finally came to an agreement that we were ready to sign, we used as many of the masters as we could for reproduction. That date, of course, was blank up until the time that we had reached agreement and it was then typed in before the agreement was signed.

Q. Typed on the master copy?

A. It would be; yes, it was.

Q. Then, was the master copy used to run off this copy?

A. That is right.

(Testimony of B. H. Goodenough.)

Q. And you did not then fill in that date in Section 2 in your own handwriting?

A. No. I did not.

Q. Please refer to the last page in the document and the date above the signatures. Can you tell me who filled that in? A. I did.

Q. That is your writing or printing?

A. It is my printing.

Mr. Holmes: I will offer this in evidence and request permission to withdraw it and substitute a copy which has been previously furnished the Trial Examiner, previously identified as Company's Exhibit No. 2 for identification.

Trial Examiner Parkes: Respondent Company's Exhibit No. 2 is received in evidence.

(The document heretofore marked Respondent Company's Exhibit No. 2 for [496] identification, was received in evidence.) [497]

* * *

Cross-Examination

By Mr. Bamford:

* * *

Q. Now, directing your attention to the first conversation you had with Mr. Gorham in which Mr. Gorham presented General Counsel's Exhibit No. 6 to you—that is, the letter requesting Scheuermann's discharge and Gennai's and others—where did that conversation take place? A. In my office.

Q. And was there anyone else present besides Mr. Schwartz and Mr. Gorham?

A. When the meeting started, no.

(Testimony of B. H. Goodenough.)

Q. There were just the three of you in the meeting?
A. That is correct.

Q. And was this in the afternoon?

A. I believe it was in the morning.

Q. And had you arranged for the meeting?

A. Mr. Gorham and I had arranged for the meeting, if I recall [532] correctly, to discuss a grievance.

Q. And what was that grievance?

A. I do not recall.

Q. Do you recall the nature of the grievance?

A. I do not.

Q. Did you discuss the grievance?

A. We had a meeting, yes.

Q. About the grievance? A. That is right.

Q. Now, at what point during the meeting did Gorham present you with the letter?

A. When we came into my office.

Q. And, at that time did you engage in the conversation that you mentioned under direct testimony?
A. I did.

Q. Before you discussed the grievance, is that correct?
A. That is right.

Q. But Schwartz was there at the same time?

A. I believe he was.

Q. And what did Gorham say when handed you the letter?

A. I don't recall that he said anything. He had an envelope which he took from his pocket and handed to me. The envelope, as I recall the meeting, I opened; then read the letter.

(Testimony of B. H. Goodenough.)

Q. And, then, what was said and by whom?

A. I asked Mr. Gorham if he felt that the contents of the [533] letter were in compliance with the terms of Section 2 of the agreement. He said that he did. I, then, asked him if the three employees referred to in the letter had been given the same opportunity to become members of the I.A.M. as had all other employees under the jurisdiction of the I.A.M. He replied in the affirmative. I asked him if the contents of the letter and the action contemplated therein was in compliance with the provisions of the National Labor Relations Act, as amended. He replied that he felt certain they were; and then, I asked Mr. Gorham if he would be willing to submit to me a letter over his signature that those employees had been given the same opportunity as all other employees in the plant to become members of the Union. He said that he would furnish such a letter.

Q. Did you discuss any of the individuals by name?

A. I don't believe we did.

Q. Was there anything else said with respect to the letter that you remember?

A. About that stage of the meeting, I believe Mr. McAuliffe came in. Mr. McAuliffe was scheduled to be at the meeting and I showed the letter to Mr. McAuliffe; and then suggested that we get on with the business at hand and that I would discuss the matter with Mr. McAuliffe after we had handled the grievance.

(Testimony of B. H. Goodenough.)

Q. Well, Mr. Auliffe had come in to discuss the letter or [534] to discuss the grievance?

A. Mr. McAuliffe came in to discuss the grievance.

* * *

Q. Well, had you met and spoke with him on both of those previous occasions?

A. I don't believe I was ever formally introduced to Mr. Scheuermann. I spoke to him just casually—to say how do you do—on both of those occasions.

Q. Now, you knew who he was, though?

A. Oh, yes.

Q. But you did not ask Gorham anything special about Scheuermann? [535]

A. I did not.

Q. Did you know or had you heard that Scheuermann had been finally expelled from the I.A.M.?

* * *

A. I had never been told that he had, no. [536]

Q. And after the discussion of the grievance had been concluded, did Mr. Schwartz and Mr. Gorham then leave?

A. They did.

Q. And you and Mr. McAuliffe discussed the letter, is that correct?

A. We did.

Q. Now, will you state, please, as best you can remember, the conversation with Mr. McAuliffe?

A. Well, I told Mr. McAuliffe, who had been in on all of the contract negotiations with me, that this was, of course, applicable under Section 2 of the agreement with the I.A.M. and that as superintendent of the mechanical section where these employees worked, he should take the letter down into

(Testimony of B. H. Goodenough.)

his office, call the employees in, show them the letter, explain to them what it meant, show them the paragraph or section in the contract to which the letter related and tell them that under the terms of the contract it would be necessary for management to terminate their employment; that he should call me if he felt it necessary while, or after, he was talking to these employees.

Q. Did you discuss any of the individuals by name? A. We did not.

Q. Did Mr. McAuliffe agree to do as you suggested? A. He did.

Q. And Clyde Scheuermann's name was mentioned specifically, [539] is that correct?

A. All three of the names were mentioned in the conversation.

Q. How?

A. By reading the letter and asking Mr. McAuliffe if all three of those individuals worked for him. He said, yes.

Q. And there was nothing said, I take it, at that time that Scheuermann had been expelled from the union and fined? A. There was not.

Q. Had you ever discussed the matter of Scheuermann's expulsion with Mr. McAuliffe prior to that time? A. I had not.

Q. Prior to that time, had you ever discussed the matter of Mr. Scheuermann at all with Mr. Au-
liffe and Mr. Schwartz? A. No.

Q. Or any other I.A.M. official or shop steward?

A. I had not. [540]

(Testimony of B. H. Goodenough.)

Trial Examiner Parkes: It was my understanding, too. If you intend otherwise, I suggest that you re-phrase the question.

Mr. Bamford: I will re-phrase the question and start again.

Q. (By Mr. Bamford): Was Mr. Scheuermann's expulsion discussed during any of the negotiating meetings? A. It was not.

Q. Was the possibility of his discharge under some sort of a union security contract ever discussed? A. Never.

Q. Either with the Union or with other officials?

A. Never.

Q. To your knowledge, then, the first time that the discharge of Clyde Scheuermann was discussed was with you and Mr. McAuliffe that day, is that correct? A. That is right.

Q. Now, did Mr. McAuliffe call you back or see you again with respect to the interview he had with Scheuermann?

A. He didn't see me again, but he called me that same day. [541] Pardon me. You say in relation to Scheuermann? No, he did not. [542]

* * *

Q. (By Mr. Bamford): Except for the period from April 1, 1949 to October 10, 1949, ever since you started working at Westinghouse there has been a union security provision in the contract, hasn't there? A. With I.A.M.? Yes.

Q. Now, how many people have been discharged during that period out of the I.A.M. unit?

(Testimony of B. H. Goodenough.)

Trial Examiner Parkes: You mean at this plant?

Mr. Bamford: At this plant, yes.

A. I would estimate that there were, at least, six and probably more terminations in that period under the I.A.M. contract. There were others under the other union contract. Specifically, as to exact figures, I don't recall.

Q. Can you name any of the individuals?

A. No, I can't.

Q. Do you remember when any of them occurred?

A. Well, some of them occurred between October of 1948 and March 31, 1949.

Q. How many people have been discharged under the present contract apart from Scheuermann, of course?

Mr. Holmes: For what reason?

Mr. Bamford: For union security. [549]

The Witness: I think two or three others.

Q. (By Mr. Bamford): Can you name them?

A. No, I don't recall the specific names. I think there was one about three or four weeks ago. [550]

* * *

Q. Was it customary for letters requesting the discharge to be sent to Mr. Kelley?

A. Under the old contract, they were sent to Mr. Kelley on some occasions and on some occasions they were sent to me. The majority went to Mr. Kelley.

Q. And the practice has been varied under the new contract?

(Testimony of B. H. Goodenough.)

A. All such letters are now directed to my attention.

Q. Why?

A. Why, because I requested the union to follow that procedure.

Q. Now, when Mrs. Andersen appeared on the stand the other day, did you recognize her by sight? [551]

A. I did not.

Q. How many female clerical employees are there in the plant?

A. Between 150 and 175.

Q. And would you say that you recognize all of them by sight?

A. I certainly would not.

Q. Or by name?

A. I would not.

Q. Now, directing your attention to the one conversation that you said you attended in Mr. McAuliffe's office when he was absent during the last five months of 1949—that I think you said occurred in September, "but I wasn't sure when"—is that correct? [552]

* * *

Q. Were there any union representatives present?

A. There were not.

Q. Prior to that time, had anyone been laid off out of seniority?

A. Yes.

Q. How many in the machinists Union?

A. Mr. Bamford, from the middle of March until December the roll in the Machinists Union went down from, if I am not mistaken—about 1,290 people to around 400 people. It is impossible for me to testify as to the sequence of those layoffs and

(Testimony of B. H. Goodenough.)

how many people were laid off outside of seniority. But I know that in that period there were layoffs outside of seniority in several of the departments.

Q. Can you recall any specific instance or any specific name of anybody laid off out of seniority?

A. I recall a specific instance or instances in Building 61 in switch gear welding and transformer welding. There were also specific instances in the turbin assembly department and there were people on the roll at that time—at the time of this meeting—in almost all of the mechanical sections who had less seniority than some individuals who had been laid off.

Q. The usual departure from seniority was because of merit rather than lack of ability? [569]

Mr. Holmes: I don't understand that—"merit rather than lack of ability."

Mr. Bamford: You can let a man with higher seniority go because he is bad, or you can keep a man with higher seniority. I am trying to find out the preference.

Trial Examiner Parkes: Does the witness understand the question?

The Witness: I think I do.

I would say that all people who were retained out of seniority were retained because management felt that they would have to be retained to maintain efficient operation of the organization. [570]

(Testimony of B. H. Goodenough.)

Q. Well, do you know about how many years the employees who you were normally laying off at that time had with Westinghouse or Hendy?

A. Mr. Bamford, at that time we had people on the roll who had been there only five or six or seven months, who were retained on the roll because of special skills on certain jobs; and there had been people who were laid off with as high as five or six or seven years of seniority—with considerable opposition by the Union.

Q. At that time, is that correct?

A. At that time.

Q. But in the normal course of events at about that time, how many years had employees been working who were being laid off?

Mr. Holmes: At what time?

Mr. Bamford: At the time of this conference.

The Witness: I would say that to all intents and purposes, in September and October of 1949, we were up to people who had [571] two, three and four years of service. [572]

* * *

Q. How?

A. Mr. King was transferred early in September from one job to another. He was in the mechanical section as a machinist and was moved from that section to Mr. McAuliffe's department as a result of a machinery rejuvenation and location problem in the plant. Mr. Gorham, at one time, came in to see me and said that he didn't favor

(Testimony of B. H. Goodenough.)

that move because Mr. King had been retained outside of seniority, I believe, and that this move put him into a department where his seniority might protect him; and that he felt that was unfair to the other employees with greater seniority.

I told him, I believe, that I had no knowledge as to Mr. Kings' abilities as compared to other people in the section; that I felt that before he brought any grievance or any protest to my office, that he should certainly discuss it with the foreman and the superintendent of the mechanical section. Mr. Gorham, if I recall, said that he would discuss it with Mr. McAuliffe.

Q. To your knowledge, did he?

A. To the best of my knowledge, he did. Yes.

Q. Did Mr. McAuliffe speak to you about it?

A. No, I said—if I recall correctly—Mr. Gorham told me later that he had talked with Mr. McAuliffe and Mr. McAuliffe had said that Mr. King was going to stay in the maintenance department. [578]

Q. And when did this come up, do you remember?

A. When did this—

Q. When was your first discussion with Gorham about King?

A. It was shortly after he had been transferred. I would say it was probably within a week after he was transferred because the union usually doesn't wait very long on those things.

Q. But the matter was processed first by griev-

(Testimony of B. H. Goodenough.)

ance and was brought directly to you by Mr. Gorham?

A. As I recall it, yes. There was never any formal agreement filed on the thing.

Q. Was that the customary procedure?

A. There were times when Gorham called me on the phone and came into my office to discuss union problems, yes.

Q. At the third level?

A. There were times, yes.

Q. Did this first discussion with Gorham occur before or after the Marovich conference?

Mr. Holmes: I object to "the Marovich conference."

Mr. Bamford: I was just using a short cut. I will rephrase the question.

Q. (By Mr. Bamford): Did the first conference with Gorham, with respect to King, occur before or after the general conference on welders and layoffs in the mechanical department?

A. I don't know.

Q. Was it about the same time? [579]

A. I would say it was within the first three weeks of September, yes. [580]

* * *

Redirect Examination

By Mr. Holmes: [597]

Q. Where were the meetings held?

A. The majority of the meetings were held in

(Testimony of B. H. Goodenough.)

my office. There were one or two meetings held in the conference room on the second floor of Building 82. [598]

* * *

Q. I believe you testified that you saw Mr. Scheuermann first—that is by knowing him by name—at the representation hearing early in the spring of 1949, is that right?

A. That is right.

Q. Did Mr. Scheuermann testify at that hearing?

A. Yes, he did.

Q. Were you present? A. I was. [598-B]

* * *

Q. I believe you mentioned a conversation with Mr. Gorham pertaining to Mr. King and the fact that he had been retained although individuals with more seniority had been laid off. Was anybody else present at that conversation?

A. I don't believe so, no.

Mr. Holmes: I think that is all.

Trial Examiner Parkes: Mr. McGraw, do you have any questions you would like to ask Mr. Goodenough?

Q. (By Mr. McGraw): Mr. Goodenough, is it fair to say that during the negotiations in 1949, that the question of wage administration was, perhaps, one of the biggest issues between the parties—between the I.A.M. and the Company?

A. I think it was. Yes. [598-C]

* * *

(Testimony of B. H. Goodenough.)

Q. (By Mr. Bamford): Did Gorham come in to see you about a transfer of King from one department to another department?

A. I believe I have testified that I do not recall whether he came in to see me or called me on the phone.

Q. Or however you talked with Gorham, then?

A. He did talk to me in relation to a transfer of King.

Q. And what was said about the transfer of King?

A. Well, that Mr. King should not have been transferred and that he had been retained out of seniority. [598-J]

JOHN J. McAULIFFE

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes:

* * *

Q. You are employed by Westinghouse Electric Corporation, Sunnyvale plant? A. Yes.

Q. In what capacity?

A. As Mechanical Superintendent.

Q. And generally what are the duties of your position?

A. Well, I supervise the—the plant is broken

(Testimony of John J. McAuliffe.)

down into two sections, the Electrical and Mechanical, and I supervise the activities in the shop, in the factory end of the Mechanical Section.

Q. That is, mechanical production?

A. Yes, that's right.

Q. Do machinists and welders and mechanics of various sorts work in the department that you supervise?

A. They do. [601]

* * *

Q. On or about November 11, 1949 did you attend a grievance meeting in Mr. Goodenough's office?

A. I did.

Q. Do you remember who was there on that occasion?

A. Let's see—Mr. Goodenough was there, Mr. Gorham, Mr. Schwartz, myself—I believe that is all.

Q. Did you arrive at the beginning or did you arrive after the other individuals were there?

A. No, I was the last one to come in. I think I came in a few minutes late.

Q. What was the purpose of the meeting?

A. Well— [603]

Q. So far as you knew before you got there?

A. It was a grievance that had gone through the regular routine up to Mr. Goodenough and I was called up there by Mr. Goodenough to discuss it with Mr. Gorham and Mr. Schwartz. Now, I don't remember what the grievance was now, but it was a grievance, anyway.

(Testimony of John J. McAuliffe.)

Q. It had gone through the regular process?

A. Yes.

Q. What occurred when you entered the room?

A. Well, as I remember, they were about ready to begin discussing the grievance, and when I came in Mr. Goodenough tossed me a letter, and I glanced at it and then the grievance meeting started.

Q. I see. Did you mention this letter to—did anybody mention the letter or its contents before the grievance was discussed?

A. Not as far as I know, no.

Q. Not while you were there?

A. No, that's right.

* * *

Q. (By Mr. Holmes): I show you a document which is in evidence as General Counsel's Exhibit 5, I believe. It isn't marked on the Exhibit—yes, it is marked as General Counsel's Exhibit 6—and ask you if you can state whether or not this is a copy of the letter which you saw on the occasion you have [604] just referred to?

A. Yes, that's it. I didn't, however, have these notations on it when I got it.

Q. All right. Now, what occurred after the grievance, the discussion of the grievance was completed?

A. Well, as I remember it, after the discussion was over I waited in my chair there until Frank Gorham and Carl Schwartz left, and I read the letter again and then Mr. Goodenough told me that

(Testimony of John J. McAuliffe.)

I should take it down and take care of the matter. That is, the way he put it, was that I should talk to the people involved and terminate them in accordance with the letter.

Q. Did you return to your offices then?

A. I did.

Q. During the course of the day did you get in touch or attempt to get in touch with the individuals named in the letter? A. I did.

Q. The first name appearing therein is Louis G. Gennai? A. Louis Gennai, yes.

Q. Did you talk to him?

A. I did. I had him come over to my office.

Q. About what time?

A. According to my recollection it was right after lunch.

Q. All right. What did you tell him?

A. I told him that in accordance with our contract with the [605] Union and due to his failure to pay dues, to pay his dues, we had been instructed by the Union to terminate him, and I gave him the letter to read.

Q. I see. What did he tell you?

A. Oh, he said that he was very disturbed and he said that he had attempted to pay his dues to a steward in his department. He was in the Welding Department by the way. He had attempted to pay his dues to a steward in the Welding Department and for some reason or other the steward was—didn't take them or didn't have his book or something, and he had put it off for a period. And then

(Testimony of John J. McAuliffe.)

the steward was out sick, so he never did—apparently never did pay his dues. So I told him that he had better go down and see Schwartz about it.

Q. Does Mr. Gennai speak English well?

A. Not very well, no.

Q. Did you talk to him again later in the day?

A. No, I didn't.

Q. Did you talk to Schwartz about it?

A. I did. I went down and talked to Carl Schwartz, probably about an hour later, and Schwartz told me then that there was—that everything was all right.

Q. I direct your attention to the marks on the name of Louis G. Gennai and the notation in ink at the bottom.

A. Yes.

Q. Can you state when those marks were made on the original [606] letter and when the notation was made in ink on the original letter?

A. Yes. I went down and talked to Schwartz, as I told you before, and then I immediately came back and called Mr. Goodenough and told him the the circumstances of these things. Well, he said, "If that is the case, then get Schwartz to indicate that on the letter." So I then had my secretary call down in the department where Schwartz was located and he came up to my place and he—to my secretary's place, and he put that on there.

Q. He wrote it on then?

A. He wrote it on then, he wrote it on there, yes.

(Testimony of John J. McAuliffe.)

Q. Did you attempt to get in touch with Cleveland A. Norris?

A. Cleveland Norris—in looking up the records in my office, in my secretary's office, Cleveland Norris had been out for some time due to a disability, and according to the report he was then in Texas, so we made no further attempt to do anything about that.

Q. Did he ever return to the plant?

A. No, he didn't. That is, he didn't return to my department, anyway.

Q. Did you make any attempt to get in touch with Clyde W. Scheuermann?

A. Yes. Scheuermann was on the second shift, so I notified the foreman in the department that Clyde Scheuermann worked in [607] and had Clyde Scheuermann come over to see me as soon as he came on, at the beginning of the second shift.

Q. Did he come right into your office?

A. Yes, he did.

Q. About what time of day was that?

A. It was just about four-thirty.

Q. Is that when the second shift begins?

A. That is when the second shift begins, yes.

Q. Did he come in to see you?

A. Yes, he did.

Q. What was said on that occasion?

A. Well, I told him the same thing that I told Gennai, that we had been notified by the Union to terminate him because of his failure to pay dues, in

(Testimony of John J. McAuliffe.)

accordance with the contract, and I immediately handed him the letter.

Q. Did he read it, so far as you could tell?

A. Yes. He took considerable time reading it.

Q. Then what was said?

A. Well, Scheuermann said—he said, “I don’t know anything about it.” As near as I can remember those were his exact words, “I don’t know anything about it.”

Q. What did you say?

A. I said, “Well, we have been notified to terminate you, as you see there.” Then he looked at the letter again and he said, “Well, what do you think I ought to do about it?” So [608] I said, “Well, why don’t you talk to the Union about it?” And he said, “That wouldn’t do me any good.” Then I said, “Well, why don’t you talk to your attorney?” And I guess he gave it some consideration. There was a silence for a period. Then he said, “Could I have a copy of this made?” And at that time my secretary had gone home, I believe—yes, my secretary had gone home then, and so I said, “I am sorry, but I can’t have a copy made, but you can make a copy yourself if you want to.” So I gave him a pad of paper and he copied it. That is,—he copied it, yes. I think he copied it just as it is.

Q. It appeared, so far as you could tell, he was copying the letter?

A. Yes.

Q. Did he take some time to do that?

A. Yes, he did. He took probably five minutes to copy it.

(Testimony of John J. McAuliffe.)

Q. I see. Then what happened?

A. Well, that appeared to end the thing, because, I think I made the next remark. I asked him to check out his tools that evening.

Q. I see. What did he say about that?

A. He said, "All right." That was all there was to it.

Q. Anything else said in the conversation?

A. No, nothing at all.

Q. Now, tell me specifically, did you say to Mr. Scheuermann "I don't think they can make it stick"? [609]

A. No, I made no such statement.

Q. Did you make any statement similar to that?

A. No, I did not.

Q. Did you point out to him specific provisions of the contract? A. No, I didn't.

Q. Did you show him Section two and point out certain lines and ask him about certain lines in the contract or point them out to him?

A. No, I did not.

Q. Do you recall anything else that he said in the conversation? A. No, I don't.

Q. Did he tell you during the conversation that he had been fined and expelled from the I. A. M.?

A. No, he didn't.

Q. When did you talk to Mr.—did he leave then?

A. He left then, yes.

Q. When did you talk with him again?

(Testimony of John J. McAuliffe.)

A. Well, Mr. Scheuermann called me that night at my home. He said that he had been having difficulty in making his tool checks check with the tools that were charged out to him, and that he thought it would—he could probably do a better job in the daytime when there were more people there. That is, when there were more people in the tool crib to handle the [610] matter, and I agreed with him, that probably that was the case and it would be all right for him to return the next day to take care of the matter.

Q. About what time was it when he called you?

A. It seemed to me that was about eight o'clock.

Q. Was that the entire conversation?

A. Well, he did remark that somebody was going to come down to pick him up at the plant, and the impression I got was that he wanted to leave at that time, immediately.

* * *

A. Well, they were giving us an argument on them. They didn't think these men should be laid off.

Q. What did they say?

A. Well, they said they had too much seniority. They didn't think they should be laid off because we were laying them off out of seniority.

Q. And what did you say about it?

A. I told them that they were not proficient in their work to the extent that other men who had less seniority were and therefore we wanted to keep

(Testimony of John J. McAuliffe.)

the other men. That is, the men who had less seniority.

Q. I see. For that reason?

A. That's right.

Q. How long did you talk to Mr. Schwartz and Mr. Sohm about it?

A. I remember the conversation took place in the conference room opposite the office there. I remember that distinctly.

Q. That is, opposite your office?

A. Beg pardon?

Q. Opposite your office?

A. No, it is really opposite Culbertson's office. It is across the hall, down the hall just a little bit from my office, and I remember distinctly the conversation took place there. Now, how long it lasted—as I remember, it was [618] some time because we were given quite an argument on these two men because they had such long seniority. I'd say it was three-quarters of an hour.

Q. All right. Was the Union, or, were the Union representatives satisfied with your answers?

A. No, they weren't satisfied when we got through.

Q. I see. Did you write the statement on these two cards appearing after the numeral 2 and above your name?

A. That's right. I did on that one (indicating.)

Mr. Bamford: Which one is the witness referring to?

(Testimony of John J. McAuliffe.)

Mr. Holmes: He referred to Exhibit 5.

The Witness: I did on both of them, yes.

Q. (By Mr. Holmes): On both of them?

A. Yes.

Q. And did you do it on both at the same time?

A. Yes, I did them both at the same time, yes.

Q. And then what did you do with the cards?

A. Well, I wrote that on and signed my name and date and turned it back to—turned them back to Carl Schwartz. That is our usual routine.

Q. That is your usual routine? A. Yes.

Q. Was there another card attached to the bottom of it?

A. Yes, there was. I don't know—yes, there was a Union copy and a management copy. [619]

Q. This is just the management copy?

A. Yes. They were both together when I looked at them.

* * *

Q. Going back for a moment to the conversation you had with [620] Mr. Scheuermann in your office, did you state in that conversation that in your opinion you didn't think it was quite right for Scheuermann to be discharged?

A. I did not.

Q. In that conversation did you state that you or Mr. Goodenough had asked the Union the three necessary questions?

* * *

(Testimony of John J. McAuliffe.)

Cross-Examination

By Mr. McGraw: [621]

* * *

Q. Now, prior to the time that you talked with Scheuermann about his termination under the Union's letter of request, did you know that Scheuermann had been expelled from the I. A. M.?

A. No, I did not. I don't think I did. That is—no, I am sure I didn't.

Q. Had you heard that he had been in trouble with the Union?

A. Well, yes I had, yes. He had been in trouble with the Union, yes.

Q. Is that why you asked him to see his lawyer or why you suggested he see his lawyer?

A. Yes, I think probably that is true, yes.

Q. But he didn't mention what that trouble was in his discussion with you?

A. No, he didn't. We didn't go into it at all, you know. [625]

* * *

Q. (By Mr. Bamford): Did you know that Scheuermann was a valuable worker?

A. He is a good man, yes. Now, there are other men better than Scheuermann there, but he is a good man. [627]

* * *

Q. (By Mr. Bamford): I believe you said you showed Scheuermann the letter, is that right?

A. That's right, yes.

(Testimony of John J. McAuliffe.)

Q. Prior to that did you read it to him?

A. No, I did not.

Q. Did you show him the contract? [628]

A. No, I did not.

Q. Did you have a copy of the contract?

A. Yes, I had a copy of the contract. I always have a copy of the contract when we talk to anybody about matters like that.

Q. Were there any questions about the contract?

A. No, there weren't.

Q. Or any discussion about the contract?

A. Except that I told him that he was to be terminated in accordance with the contract, because of non-payment of dues.

Q. I see.

A. But there was no other reference to the contract at that meeting with him.

Q. Well, do you remember what your exact words were?

A. It is quite a while ago, you know.

Q. Yes, I know.

A. Well, let's see. As near as I can remember I said, "We have been requested by the Union to terminate you for non-payment of dues, in accordance with the contract." As near as I can remember those are my exact words.

Q. You didn't say anything about initiation fees, is that correct, to Scheuermann?

A. No—I don't know—I said "dues"; that is all I said as I remember it. [629]

(Testimony of John J. McAuliffe.)

Q. Yes. Was that your interpretation of the contract, that the employees just had to pay their dues to the Union; is that correct?

A. I don't think I knew, to tell you the truth. It seems to me dues—to be truthful, it seems to me it would include both initiation fees and dues, if there were such a thing. I don't know, really. I said "dues" and what I meant by it was any payments that he was supposed to make to the Union. That is what I meant when I said "dues." [630]

* * *

Q. Well, at any time.

A. At any time—I don't remember. We had many of these cases, you know, and it just doesn't stand out clearly in my mind. That is, many Union matters, so it just doesn't stand out clearly in my mind that I had any talk with any Union representative later on it. [632]

* * *

Q. Now, when you state that Pachorik's name was on a termination list, did you mean on a tentative list or on a final list?

A. That was on a tentative list. The reason I remember that particularly was because our work in the large lathe department was getting way down, so I remember particularly that we'd only be left with a very few men in that department; that is, considering the amount of work we had, you see.

Q. Do you remember what month that occurred in?

(Testimony of John J. McAuliffe.)

A. It was very late in the year of 1949. I know that. I am afraid I couldn't—I am afraid I can't remember. It runs in my mind it was along about December, but maybe I am wrong on that. I could verify that down at the plant.

Q. Had his name appeared on any prior termination list?

A. I can't state that for sure but my impression is that it [636] had not. [637]

* * *

Trial Examiner Parkes: Well, I think the question is clear. If it isn't clear to the witness he can say so.

Do you understand the question, sir?

The Witness: I am afraid I don't yet.

Q. (By Mr. Bamford): Well, during 1949 you were making large scale layoffs, weren't you?

A. That's right, yes.

Q. And in your department?

A. That's right.

Q. Now, do you remember on any occasion where any employee [643] was laid off 30 names out of seniority during the course of one of those layoffs?

A. For any reason, 30 names—

Q. During the course of the layoffs, for lack of work?

Mr. McGraw: I am confused now. I thought I knew what he was talking about. Do you mean that he was jumped 30 names so that you could keep him, or that 30 people were involved?

(Testimony of John J. McAuliffe.)

Mr. Bamford: Well, I said laid off rather than skipped over. It seems to me that the question was clear.

Q. (By Mr. Bamford): Do you understand what I am getting at, Mr. Witness?

A. Well, it seems to me——

Mr. Holmes: Do you?

Mr. Bamford: I think I do.

Mr. Holmes: Well, I don't.

A. (Continuing): You go down the list 30 names and then you pick out somebody and lay them off?

Q. (By Mr. Bamford): That's right.

A. Well now, you see there are people who are proficient in certain lines. Take lathe boring mills and so on and so forth. We do, in layoffs, take those people and the seniority in that group is considered and the seniority in the particular group is considered and so forth. That is, you don't take the whole group of people as a group.

Q. I see. You were just taking them department by department? [644]

A. It is really that, yes. Now, I mentioned the big lathes. Well, that is a department, and usually people that operate the big lathes don't operate the other tools, you see, or are not proficient at the other tools. They might be able to operate them, but they aren't proficient at the other tools.

Q. Well, what was Marovich's job at the time he was laid off?

(Testimony of John J. McAuliffe.)

A. To be truthful, I don't know; at the time he was laid off—I don't know.

Q. In the grievance meeting that you had with Schwartz and Gorham was there—did you have a seniority list as a bottom to the conversation or did the seniority list appear during the conversation?

A. I don't remember it, but I think it must have because we must have discussed that, you see. I don't remember it particularly.

Then I would take it from that answer that you don't remember how far down the plant seniority list Marovich's name appeared, is that correct?

A. No, I don't.

Q. Well, what is your—prior to the interview concerning the termination of Marovich with Gorham and Schwartz, before that interview did you talk—

Mr. Holmes: I think that misstates—

A. I don't think Gorham was there. It wasn't Gorham.

Q. (By Mr. Bamford): Oh, I am sorry. It was Carl Sohm? [645]

A. Sohm and Schwartz; that is the way I remember it, yes.

Q. That was inadvertent. Prior to the interview with Schwartz and Sohm, then, did you talk the matter over with Shields or with any of Marovich's supervisors?

A. Well, I don't remember doing it, no. I don't remember doing it but I'd say I did. That is, I don't remember it, no.

(Testimony of John J. McAuliffe.)

Q. Was it your custom to talk——

A. Yes.

Q. I see.

Was it your understanding that Marovich and Ashton were being discharged during the course of a layoff?

Mr. Holmes: That is objected to. He stated the reason for the discharge or termination of those two men. I think the question has been adequately asked and answered before.

Trial Examiner Parkes: Overruled.

A. They were primarily terminated for their inability to meet production requirements. It was during a period, however, when work was very slow.

Q. (By Mr. Bamford): But the emphasis was—in the grievance was that they were actually being discharged because of incompetence rather than in the course of a layoff, is that right?

A. Yes, I'd say so.

Q. Now, as I understand it, your signature on Company's Exhibit 6, the grievance, is in reference to the statement [646] in Section 2, is that correct? [647]

* * *

A. Well, of course you understand I put the pressure on Shields to get production out, to meet production requirements, meet time values we set, and we quite often discuss various people from that viewpoint with regard to their ability to get out production requirements, and I remember—and I couldn't pick out the particular times but I remem-

(Testimony of John J. McAuliffe.)

ber Marovich's name coming up occasionally as not being able to meet production requirements.

Q. And when was the first such occasion?

A. I can't truthfully say when the first occasion was. My impression was it was a number of months ahead of this, six months probably, at least six months.

Q. And so between the time—between six months before his termination and two months before his termination, at least on two occasions and perhaps more you spoke with Shields about Marovich's work, is that correct?

A. That's right, yes. I'd say that was right. [648]

* * *

THOMAS P. SHIELDS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes: [665]

* * *

Q. All right. Do you recall whether during the, say, the second half of 1949 there were a great many layoffs at the plant? A. Yes.

Q. Were some of them in your department?

A. They were.

Q. A large number of them, compared to the number of men you had?

(Testimony of Thomas P. Shields.)

A. Yes, the percentage was rather high. [666]

Q. Approximately what percentage?

A. I'd say during the whole of '49—I'd say we reduced the force to 30 per cent of what it had been.

Q. You reduced it by 70 per cent then, is that correct? A. In that neighborhood.

Q. During the period you were laying off men, what were the considerations given in the laying off of any particular individual?

A. Seniority, ability to perform work—and that is about it.

Q. Did the particular type of work available have anything to do with it? A. Yes.

Q. During that period do you recall ever attending a meeting concerning layoffs in Mr. McAuliffe's office at any time when he was not present at the meeting? A. Yes, I do.

Q. How many such meetings?

A. I remember only one.

Q. Do you know about when it was?

A. In the early part of September, 1949.

Q. Do you recall who was present?

A. Mr. Buckingham, Mr. Hoffman—

Mr. Bamford: Does the witness mean Mr. Huffman?

The Witness: Huffman, yes.

Mr. Bamford: Thank you. [667]

A. (Continuing)—Mr. Harrison, Mr. Gorham, and later on in the meeting Mr. Kerm Clark and Mr. Ghiorso.

(Testimony of Thomas P. Shields.)

A. Yes, in the Mechanical Division, and it was to discuss whether we should go on a shorter work week or lay off men or transfer them to another division, a discussion along that line, and I also had to lay off some men.

Q. In the course of that meeting did Mr. Goodenough ever say this: "Mr. Gorham is here and has a few words to say." Did he ever introduce Mr. Gorham to speak in that manner or in any manner similar to that?

A. Not that I remember.

Q. Did Mr. Gorham ever say: "Now that the contract is buttoned up I want you to do something for me, and that is get rid of four men; Floyd King, Pachorik, Clyde Scheuermann and John Marovich"?

A. No.

Mr. Bamford: Suppose we ask the witness what he does [668] remember about the meeting.

Mr. Holmes: Just a moment. I am conducting this examination.

Trial Examiner Parkes: I think the question is proper.

Q. (By Mr. Holmes): Did Mr. Gorham make any statements similar to that?

A. No.

Q. Did he ask that anybody, any particular individual, be discharged or gotten rid of or terminated?

A. No.

Q. Do you know whether Mr. Gorham left the meeting before it was over?

A. He did.

Q. Did Mr. Goodenough, after Mr. Gorham left the meeting, say anything like this: "Frank" or

(Testimony of Thomas P. Shields.)

“Mr. Gorham has been a good boy about signing this contract and I think we ought to see what we can do for him”?

A. No.

Q. Did he say anything similar to that?

A. No.

Q. Did Mr. Goodenough suggest that anybody state how or in what manner or by what excuse any particular individual could be gotten rid of or terminated?

A. How is that again, please?

Q. Did Mr. Goodenough ask anybody to state what grounds or [669] what excuse he might have for terminating anybody?

A. No.

Q. All right. Was anything discussed in this meeting besides the question of work for the welders and the short week or laying off of welders?

A. Yes.

Q. What was discussed?

A. We discussed the laying off of some machinists and transfer—laying off and transfer.

Q. And did that directly affect your department?

A. Yes.

Q. What was said in regard to the laying off or transfer of machinists?

A. We discussed the laying off of Mr. Marovich—

Mr. Bamford: Just a minute. I move that that answer be stricken.

Mr. Holmes: On what ground, please?

Mr. Bamford: On the ground that the best evidence of what occurred at that meeting would be who said what, why and how.

(Testimony of Thomas P. Shields.)

Mr. Holmes: The best evidence rule refers to written documents, Mr. Bamford.

Mr. Bamford: Well, that happens to be an incorrect statement of the law. I would like to know how the conversation started, by whom, and what was said by whom. [670]

Trial Examiner Parkes: I take it you will go into that on your cross-examination; Counsel may proceed.

Mr. Holmes: Ad infinitum, no doubt.

Would you read the question again, please. [671]

* * *

A. Mr. Buckingham was acting in Mr. McAuliffe's capacity. He would have, at that time, been their supervisor in Mr. McAuliffe's place.

Q. He held a supervisory position above yours?

A. That is correct.

Q. Was the name of Floyd King mentioned in that meeting? A. No.

Q. Was the name of Charles V. "Pat" Pachorik mentioned in that meeting? A. No.

Q. Was the name of Clyde W. Scheuermann mentioned in that meeting?

A. Not to my knowledge.

Q. Was anything else discussed in that meeting?

A. I don't think so; not that I remember.

Q. About how long did it last altogether?

A. Probably about two hours.

Q. Were the Union representatives present when Mr. Marovich and Mr. Ashton were mentioned?

(Testimony of Thomas P. Shields.)

A. No. At that time Mr. Buckingham, Mr. Goodenough, I believe Mr. Harrison and myself were the only ones present.

Q. Now, did you attend any other meetings in Mr. McAuliffe's [672] office during the latter half of 1949 when he was absent?

A. Not when he was absent.

Q. That is the only meeting you were at when he was absent, is that correct—in his office?

A. No. We have a weekly production meeting, at which time Mr. Buckingham, who of course would make out the production report for that week—Mr. Buckingham, Mr. Dornbush and myself were present.

Q. Who is Mr. Dornbush?

A. Mr. Dornbush is production control supervisor.

Q. And did you have some of these meetings in Mr. McAuliffe's office in his absence?

A. One.

Q. Anybody else present other than those four individuals? A. No.

Q. You say "No"? A. Three.

Q. Three other than yourself?

A. Mr. Buckingham, Mr. Dornbush and myself.

Q. Oh, I beg your pardon. Nobody else was present at that other meeting? A. No.

Q. Upon what basis did you state that Mr. Marovich and Mr. Ashton were not efficient workmen?

A. Comparison of their work with the—with other people [673] doing the same type of work.

(Testimony of Thomas P. Shields.)

Q. What type of work were they doing, do you recall?

A. Mr. Marovich was about 90 per cent of the time, I'd say, running large horizontal boring mill. The other ten per cent would have been on small horizontal boring mills. [674]

* * *

Q. Did you compare Mr. Ashton's production with other individuals'? A. Yes.

Q. When had you done this, over what period?

A. A four months' period, from May until September.

Q. When you cut down the forces in your department was it necessary that you keep the men who produced more? A. Yes.

Q. Did you ever talk to anybody about Mr. Marovich, his lack of efficiency? A. Yes.

Q. To whom? A. To his leaderman.

Q. Who was that? A. Johns; Mr. Johns.

Q. What is his first name? [675]

A. Wes, Wesley.

Q. And when did this conversation take place, or where there more than one?

A. Oh, there were conversations at various times. If a man is not producing we go first to talk to his leaderman and ask him what is the matter with the fellow, why he isn't getting anything done, and the leaderman goes out and tries to help him out, show him how to do better.

Q. And did you talk to Mr. Johns?

(Testimony of Thomas P. Shields.)

A. Yes.

Q. And what did he tell you?

A. He told me that he was slow.

Q. How many times did you talk to Mr. Johns about him? A. Oh, perhaps half a dozen.

Q. What period was that in?

A. From May until September.

Q. Did you mention this matter to anybody else?

A. Yes.

Q. To whom? A. To Mr. McAuliffe.

Q. Do you know when?

A. I can't recall exactly when. It was probably several times.

Q. You are certain you did mention it to him?

A. Yes. [676]

Q. All right. Did he tell you to—strike that. What did he tell you?

A. I don't recall that he recommended anything specifically, in Mr. Marovich's case.

Q. Did you have authority to take whatever action you thought was necessary? A. Yes.

Q. Did you have the duty to do whatever you thought was necessary? A. Yes.

Q. Then you brought it up at this meeting that you referred to? A. Yes.

Q. During this period when layoffs were taking place—I think that has been identified in this record once or twice before as being in the summer or fall of 1949—were there various termination lists?

A. There were.

Q. Did you prepare some yourself?

(Testimony of Thomas P. Shields.)

A. Yes.

Q. Were they in tentative form or final form when you prepared them?

A. I would prepare them in tentative form.

Q. And was action taken by other people on them? A. Yes. [677]

Q. Did you discuss individuals in connection with the tentative lists you prepared?

Mr. Bamford: May I have the question, please.

Mr. Holmes: I will withdraw the question. It may not be quite clear.

Q. (By Mr. Holmes): Did you discuss the capabilities of various individuals in connection with your termination lists? A. Yes.

Q. I am speaking generally, not of Mr. Marovich, but of various individuals in your department.

A. Yes, we discussed their capabilities.

Q. Was that a practice? A. It was.

Q. Do you know Mr. Charles V. "Pat" Pachorik? A. I do.

Q. Did you ever tell Mr. Pachorik that his name was on a termination list?

A. Mr. Pachorik's name was on a tentative termination list. [678]

* * *

Cross-Examination

By Mr. McGraw: [681]

* * *

Mr. Bamford: I am sorry. I haven't been precise in my terminology. Thank you, Mr. Examiner.

(Testimony of Thomas P. Shields.)

Q. (By Mr. Bamford): Had you ever discussed laying them off out of seniority before?

A. I believe I had discussed it before with Mr. McAuliffe.

Q. Both of them? A. Yes.

Q. When?

A. I don't remember the date. I do remember what he told me, and that was that due to the fact that there was no contract with any Union at that time we should not lay them off, due to the fact they had no representation and that it would look as though we were trying to get rid of them during the most favorable time to us.

Q. That was prior, then, to—do you remember the representation election in July, 1949?

A. Yes.

Q. This was prior to that time, then, is that correct? [691]

A. It was during the time that there was no contract in effect, or no representation. [692]

* * *

Q. And what was said and by whom at that meeting, as best you can remember?

A. The Union representatives objected to the layoff of Mr. Marovich and Mr. Ashton. Both cases were discussed at that time. As to just what was said, I don't recall.

Q. Did you speak at the meeting yourself?

A. Yes. [725]

* * *

SHELDON B. HUFFMAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes: [735]

* * *

Q. Were you employed during the last half of last year by Westinghouse? A. Yes, sir.

Q. And in what capacity were you employed at that time?

A. Foreman of the Welding and Fabrication Department.

Q. And did you hold that position as Foreman of the Welding and Fabrication Department during the entire second half of 1949? A. Yes, sir.

Q. Do you recall attending a meeting in Mr. McAuliffe's office sometime in the fall of 1949 at which time Mr. McAuliffe was absent, but at which time certain other supervisors were present and certain Union representatives were present?

Mr. Bamford: Just a minute.

A. I recall—

Mr. Bamford: Just a minute, Mr. Huffman. I may be making an objection at the wrong time, but—

Trial Examiner Parkes: Go ahead. If you have an objection, make it.

Mr. Bamford: Go ahead. I am sorry.

Q. (By Mr. Holmes): Do you recall the question now?

(Testimony of Sheldon B. Huffman.)

A. I recall attending a meeting in Mr. McAuliffe's office when he was absent.

Q. Do you recall who was at the meeting. [736]

A. I don't know whether I'd be able to name all the people present or not.

Q. Well, name as many as you can, will you, please?

A. Now, Mr. Buckingham was there; I believe Mr. Clark, Superintendent of the Electrical Division; Mr. Ghiorso, the Foreman of the Electrical Division Welding Shop.

Q. All right.

A. And inasmuch as I was interested in my own welding problem, I really don't know how many foremen were present.

Q. Were there others present?

A. There were others present, but I don't know just who.

Q. Do you remember whether there were any Union representatives present?

A. I remember Mr. Gorham was present at one of the meetings there. Whether this was the one, I couldn't say. We discussed—talked about laying off welders with Mr. Buckingham.

Mr. Bamford: Mr. Examiner, I move to strike the testimony of this witness and object to the introduction of any more evidence through this witness with respect to this meeting on that ground that it is irrelevant to the proceedings raised by the pleadings in this case.

Trial Examiner Parkes: It is my recollection

(Testimony of Sheldon B. Huffman.)

that the testimony so far seems to be directed toward the meeting which Mrs. Andersen gave testimony about and which was the jumping off point for all these amendments. [737]

Mr. Bamford: That is true, but Mrs. Andersen didn't testify about Mr. Huffman attending that meeting.

Mr. Holmes: That is quite true but that doesn't mean he wasn't there, though.

Trial Examiner Parkes: That may be true too.

Mr. Bamford: As I understand that meeting, the testimony so far of the Company has indicated that there was a meeting about the time of a meeting that Mrs. Andersen testified to, which took place in Mr. McAuliffe's office. Mrs. Andersen was not questioned about any other meetings which took place in that office, and it is quite conceivable, of course, that other meetings did take place in Mr. McAuliffe's office while Mr. McAuliffe was gone. She didn't testify Mr. Huffman attended the meeting and the Company's testimony so far indicates Mr. Huffman left the meeting when allegedly the discharge of Marovich and Ashton were discussed. Hence, I can't see its relevance.

Trial Examiner Parkes: Well, I think your position is untenable. The objection is overruled, motion denied.

Mr. Holmes: Can you find the last question. Mr. Reporter?

(Question and answer read.)

(Testimony of Sheldon B. Huffman.)

Q. (By Mr. Holmes): Do you remember whether any other Union representatives were there?

A. I never did do any business with any Union representatives except Mr. Gorham. [738]

Q. I see. Now, what was the purpose of this meeting?

A. The purpose of the meeting that I attended with Mr. Buckingham and these gentlemen I named was the purpose of—that is, laying off some men or placing some men because my work hours and load was down. I had a surplus of men for the amount of working hours I had on my books.

Q. And your men were what—welders?

A. Welders.

Q. Now, why were Mr. Clark and Mr. Ghiorso in the meeting? A. Why were they in?

Q. Yes.

A. Well, as I recall at that time I was told that there was some seniority in the picture and, well, as I remember at that time I had a pretty large crew and I was under the impression, or it looked like my men perhaps had seniority over some of the men in the other fabrication department, and there was a possibility of maybe the men going over there rather than being laid off.

Q. Now, your department was in what building?

A. My department was in Building 31. My department is N-23, Building 31.

Q. And what building were Mr. Ghiorso's welders in?

(Testimony of Sheldon B. Huffman.)

A. He is in Building 61, in the Electrical Division.

Q. And that is under Mr. Clark?

A. Mr. Clark is the Superintendent of that department, that [739] division, I believe.

* * *

Q. I am not certain it happened. Someone has testified to it. I am asking if you recall it.

Do you recall in this meeting in Mr. McAuliffe's office when he was absent whether Mr. Gorham or any other Union representative said anything similar to this or to this effect: "Now that the contract is buttoned up, we want you to do one more thing," or, "I want you to do one more thing, and that is get rid of four men; Floyd King, 'Pat' Pachorik, Clyde Scheuermann and John Marovich"?

A. I can truthfully say I never heard that.

Q. Or anything like it? A. No. [740]

Q. Did Mr. Goodenough say anything similar to the following: "Frank" or "Mr. Gorham has been a good boy about signing this contract and we ought to see what we can do for him"?

A. I never heard anything like that.

Q. Now, while you were at this meeting was any mention made of the name of Floyd King?

A. King?

Q. King. A. I never heard it.

Q. While you were there was any mention made of the name of Clyde Scheuermann?

A. I don't believe so. I don't know that name. German?

(Testimony of Sheldon B. Huffman.)

Q. Scheuermann. A. Scheuermann—no.

Q. While you were there was any mention made of the name of Mr. Pachorik, "Pat" Pachorik or Charles V. Pachorik?

A. Don't recall that.

Q. While you were at the meeting do you recall any mention made of the name of John Marovich?

A. No, sir.

Q. Now after you—or did you leave the meeting while some individuals were still there?

A. Well, as I remember when the meeting was dismissed—I don't know if it was dismissed. Some was dismissed. I got up and left the room with some other people. As well as I [741] recall there were some people left in the room. I don't know who. [742]

* * *

KERMIT J. CLARK

a witness called by and on behalf of the Respondent Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes: [750]

* * *

Q. Do you know whether the meeting had been in progress before you got there or continued after you left?

A. The meeting was in progress before I got there and I don't recall whether it broke up when I left or not.

(Testimony of Kermit J. Clark.)

Q. I see. Was any other subject other than the layoff or the transfer of welders discussed while you were there? A. No.

Q. Was the name of Floyd King mentioned in that meeting? A. No.

Q. Was the name of Clyde Scheuermann mentioned in that meeting? A. No.

Q. Was the name of Charles V. "Pat" Pachorik mentioned in [752] that meeting? A. No.

Q. Was the name of John Marovich mentioned in that meeting? A. No.

Q. Do you recall Mr. Gorham making any statement similar to the following: "Now that the contract is buttoned up there is just one more thing I want you to do, and that is get rid of four men; Floyd King, Pachorik, Clyde Scheuermann and John Marovich"? A. No, I do not.

Q. Do you recall Mr. Goodenough making any statement similar to the following: "Gorham has been a good boy about signing this contract and we ought to see what we can do for him"? A. No.

A. No.

Q. Or anything similar to that?

A. Nothing at all along that line.

Q. Did any Union representative suggest or request that any particular individuals be terminated or released or discharged or laid off? A. No.

Q. Did any supervisor while you were at the meeting suggest or request that any particular individual be released or terminated or laid off—while you were in the meeting? A. No.

(Testimony of Kermit J. Clark.)

Q. Now, do you know a Mrs. Chloe Andersen? [753]

A. I would recognize her face; now that she has been pointed out to me and described, I know who she is. Otherwise I wouldn't recognize her by her name. [754]

* * *

W. H. HARRISON

a witness called by and on behalf of the Respondent Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes: [755]

* * *

Q. Anybody else you recall? A. No.

Q. Now, what was discussed or—Strike that, please.

Do you recall the approximate time of this third meeting?

A. No, I don't. I don't recall the time of it.

Q. Can you place it as to month? A. No.

Q. You are certain it was during the latter half of 1949? A. Yes.

Q. What was the subject discussed at this third meeting you have spoken of?

A. Well, I came in—the meeting was assembled when I came in and they were discussing welders, the possibility of welders being transferred to 61, and later on the problem of decrease in the shop came up and there was a discussion of whether I

(Testimony of W. H. Harrison.)

could take anybody in the shop; and Marovich and Ashton's names came up. Tommy brought them up.

Q. When you say "the shop," you mean the machine shop? A. That is correct.

Q. As separate from the question of transferring welders? A. Correct.

Q. You say Marovich and Ashton were brought up by Shields? A. Yes.

Q. Do you recall what he said with respect to them?

A. Well, he said he didn't feel that they were producing [759] and doing the job in the shop, and Buck turned to me—I believe it was Buck—and stated that he wondered if they could be used on maintenance and I said no, because I felt that Marovich couldn't do the maintenance work, and Ashton had been on maintenance and had flopped on it and I just said no, that I didn't think either one of them could do maintenance work.

Q. Was anything else said with respect to those two individuals in the meeting?

A. Not to my knowledge.

Q. Was the name of Floyd King mentioned in the meeting? A. Not to my knowledge.

Q. Was the name of Clyde Scheuermann mentioned in the meeting?

A. No, not to my knowledge.

Q. Was the name of Charles V. "Pat" Pachorik mentioned in the meeting?

A. Not to my knowledge.

(Testimony of W. H. Harrison.)

Q. Do you recall Mr. Gorham making any statement similar to the following: "Now that the contract has been buttoned up there is just one more thing I want you to do for me, and that is get rid of four men; Floyd King, "Pat" Pachorik, Clyde Scheuermann and John Marovich"?

A. Not to my knowledge.

Q. Did any Union representative make any statement similar to that?

A. Not to my knowledge. [760]

Q. Did Mr. Goodenough state anything similar to the following: "Frank" or "Mr. Gorham has been a good boy about signing this contract and we ought to see what we can do for him," or anything similar to that?

A. Not to my knowledge. [761]

* * *

WILLIAM H. KELLY

a witness called by and on behalf of the Respondent Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes:

* * *

A. It was all in this same general layoff. I couldn't say whether it was a month before or after. I couldn't pin it down as to time. I could check it.

Q. You say it was in this general period?

A. Yes, it was in that general layoff period.

(Testimony of William H. Kelly.)

Q. Do you recall the conversation with Mr. Pachorik? A. I do.

Q. Would you state it as well as you can remember, please?

A. The conversation with him was that it was my understanding when the list was gone over that he would be retained because of his special ability out of seniority, and his termination, notification of his termination came as a surprise to me because I thought it was understood that he would not be laid off, and that I was sorry they had notified him because I didn't think the intention was to lay him off, but I would find out.

Q. Did he tell you that he had been notified he was to be terminated?

A. Yes, he told me he had been notified verbally that he was on the layoff list.

Q. Did he tell you who had notified him?

A. If he did I don't remember. I presume it would be his supervisor.

Q. That is your assumption, is that correct?

A. Yes. It was official; whoever told him had the right to [771] tell him, so that is the impression I got from the fact he was in there. He was not on the list to be laid off at the time I went over this list in the beginning, before any of them were notified. It was my understanding that Pachorik would not be put on the actual layoff list. [772]

HERBERT CRANE BUCKINGHAM

a witness called by and on behalf of the Respondent Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes: [804]

* * *

Q. Did you call him in? A. I did.

Q. Did he come in?

A. He attended the meeting.

Q. All right.

A. Well, then we brought up several names. I don't recall any particular list of names. And then it boiled down to two people that Mr. Shields discussed with me.

Q. Who were those two?

A. One was a man by the name of Ashton and the other was John Marovich.

Q. What was said with respect to those two?

A. Well, we brought them up to Mr. Harrison's attention, concerning Ashton first, and it seems that there was some question about Ashton being able to perform this job. I just don't recall the intent, other than the fact he wasn't capable of doing this particular job; and then Marovich was mentioned and his name—well, he had been a machine hand. Shields [807] brought up the point that it seemed that Johnny, although doing a fairly good job, wasn't making his time and where some of the other fellows who he thought didn't have quite the seniority Johnny did—those particular individuals were

(Testimony of Herbert Crane Buckingham.)

turning out more work and that he would sooner keep—now, I don't know the names—and Marovich was discussed for quite some time.

Q. What did he say in comparing these other individuals with Marovich?

A. Well, he said that—it seemed that they—in other words, we were getting to the point where he had to make out on these jobs. In other words, our time cards were marked with a certain limit on them and we had to make it, and at that time some of these individuals were making the limits and doing better. And Shields brought up the problem that although Johnny was doing a fairly good job he wasn't making his time and that was—but at that time that decision, I think—I mean the finality of that discussion—that was the finality of that discussion concerning Johnny at that time.

Q. "Making time" meant what?

A. Producing the job in the time allowed by our methods people.

Q. All right. Was anything else said that you recall?

A. No. I think—to my mind that was about all that I can recall. The meeting came to an end because we had been in there quite a while and we didn't like to keep the fellows off [808] the floor and as soon as possible we went back on the job.

Q. Were any Union representatives there?

A. I am trying to visualize the facts, whether they were or not. I don't recall whether there was

(Testimony of Herbert Crane Buckingham.)

or not. Somehow I kind of think Frank was there for a short while but I couldn't say definitely.

Q. Frank who? A. Frank Gorham.

Q. So you don't know definitely whether he was or not? A. I do not, that's right.

Q. To your recollection did any Union representative make a request or a demand or a suggestion in that meeting that any particular individual be terminated? A. No, not to my knowledge.

Q. Was the name of Floyd King mentioned in that meeting?

A. It seems that the fact is that his name was mentioned, that he had just been recently, if I am not mistaken, transferred to another department, but that is all that I can recall of hearing of him. We were going through the people who had been transferred from the Mechanical Division to this repair section and there was several around that time who had been transferred. If I am not mistaken King's name was mentioned at that time but that is all.

Q. Was the name of Pachorik mentioned?

A. No, sir; not to my knowledge. [809]

Q. Was the name of Clyde Scheuermann mentioned? A. No, sir.

Q. Now, in that meeting do you recall Mr. Gorham or any other Union representative saying anything like this: "Now that the contract is buttoned up there is just one more thing you can do for us and that is get rid of four people; Floyd King, Pachorik, Clyde Scheuermann and John Marovich."

(Testimony of Herbert Crane Buckingham.)

A. Absolutely no. I don't remember Frank Gorham being there.

Q. Well, did any other Union representative say anything like that? A. No, sir, absolutely not.

Q. Was Mr. Goodenough there?

A. Yes, I think he came down and sat in there and listened to the proceedings.

Q. Now, did Mr. Goodenough make any remark like the following: "Frank" or "Mr. Gorham" or possibly the Union—no, I guess not—strike that, please.

"Frank" or "Mr. Gorham" one or the other, whichever name he may have used, "has been a good boy about signing the contract and we ought to see what we can do for him"? [810]

* * *

WESLEY JOHNS

a witness called by and on behalf of the Respondent Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes: [830]

* * *

Q. Did you check his work as to time values?

A. Yes.

Q. Would you state what you found in checking Mr. Marovich's work?

A. I found that Johnny Marovich's work, according to the time values and the precedent established through other workmen in the shop was low.

(Testimony of Wesley Johns.)

Q. Did you compare his work to—or, the output of Mr. Marovich to that of other individuals?

A. Yes.

Q. Do you know what other individuals?

A. Yes.

Q. Were they on the same shift, the swing shift, or what? A. They were on other shifts.

Q. Other shifts? A. Yes. [833]

Q. Could you compare his work to other individuals' on exactly the same machine?

A. On exactly the same machine, yes. [834]

* * *

EMIL TONASCIA

a witness called by and on behalf of the Respondent Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes: [865]

* * *

Mr. Bamford: Well, your next question was what the conversation was about. Where, when, who was present?

Q. (By Mr. Holmes): Will you state where the conversation took place? A. Would I say——

Q. Where did it take place?

A. It took place in the department where I was working.

Q. That is, the Pipe Department? A. Yes.

Q. Do you know about when?

(Testimony of Emil Tonascia.)

A. Well, I believe it was about a week or so after we were told that we had won a shop election.

Q. That is, a union shop election?

A. Union shop election, and I——

Q. Just a minute. And who was there?

A. Scheuermann was there. [866]

Q. Anybody else? A. No.

Q. All right. Now, will you tell us what the conversation was about?

A. Yes. I asked Clyde Scheuermann, I said, "Now that the election is—that the shop has won the union election, what effect will that have upon you?" He said, "None whatever. The Taft-Hartley law protects me."

Q. Did you talk to him about that matter afterwards?

A. No. I avoided him at all times, because I didn't want to get into a discussion at all, because it was too deep for me. [867]

* * *

Cross-Examination

By Mr. McGraw:

Q. Mr. Witness, did you find in your association and observation of Mr. Scheuermann that he was well informed about the things that went on in the shop? A. Oh, yes. He was well informed.

Mr. McGraw: That is all.

Q. (By Mr. Bamford): What do you mean by "well informed"?

(Testimony of Emil Tonascia.)

A. He knew everything that was going on.

Q. What do you mean by that "everything that was going on"?

A. He knew everything that was going on in the department, and the shop as well.

Q. You mean he knew what the work was about, is that right? A. How?

Q. By "everything," "everything that was going on," you mean he knew the type of work that was being done?

A. No, regarding union activity.

Q. How do you know that?

A. Well, from what I understand from hearsay among the other [868] fellows.

Q. What other fellows?

A. The other men in the department.

Q. They would tell you that Clyde knew what was going on?

A. They'd come and tell me and I'd say, "Let's forget it; let's get some work done."

Q. What would they tell you?

A. I don't know what they was telling me.

Q. When did they tell you this?

A. Well, when we were working.

Q. Was that prior to Scheuermann's discharge?

A. Yes.

Q. How soon prior to Scheuermann's discharge?

A. Well, within a month or so. No one knew at the time that he was going to be discharged.

Q. Isn't it a fact that Judd was Scheuermann's leaderman prior to his discharge?

(Testimony of Emil Tonascia.)

A. That Judd was?

Q. Yes. A. Yes, I think you are right.

Q. And when did you stop being Scheuermann's leaderman? A. When?

Q. Yes.

A. Oh, I can't say. I recollect, now that you brought that up that he was. I was his leaderman first and then he was [869] transferred over to Judd, you are right.

Q. As a matter of fact, it was quite a while before he was discharged that he was transferred, wasn't it, a couple of months?

A. I wouldn't say a couple of months. Probably a month or so. He wasn't with Judd very long. [870]

* * *

HENRY GROTH

a witness called by and on behalf of the Respondent Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes: [871]

* * *

Q. Which shift did you work on in the month of October last year?

A. I have always worked day shift.

Q. Do you recall when Les Ollis was laid off?

A. Yes, I do.

Q. Do you remember what month it was?

(Testimony of Henry Groth.)

A. I believe it was in October, September or October.

Q. All right. A. I am not sure.

Q. Do you use the same locker room, or did you use the same locker room in September or October as Mr. Ollis and Mr. Scheuermann and Mr. Smiley?

A. I did.

Q. During either the month of September or October, before Mr. Ollis was laid off, do you recall being in the locker room on any occasion when Mr. Ollis attempted to pay his dues to Mr. Smiley and Mr. Smiley refused to take Mr. Ollis' dues, with a remark something similar to this: "You know I can't take your dues"?

A. No. That I couldn't answer, that I heard that.

Q. Do you recall any occasion——

A. Well, I heard rumors in the plant about it and all that but I did not hear a definite statement.

Q. Do you remember any occasion when you were present when Mr. Ollis attempted to pay his dues to Mr. Smiley? [872]

A. No, I do not.

Q. Either in the locker room or anywhere else?

A. Or anywhere else, no. [873]

* * *

ELMER SMILEY

a witness called by and on behalf of the Respondent Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Holmes:

* * *

Q. And were you employed by that Company at that plant during the months of August, September and October of 1949? A. Yes.

Q. As a machinist at that time? A. Yes.

Q. Did you have any position in the Union?

A. Yes. I am a steward and on the Executive Board.

Q. And you were at that time? A. Yes.

Q. Do you know Les Ollis? A. Yes.

Q. During that period, August, September or October, 1949, do you recall any occasion when Mr. Ollis offered to pay to you his Union dues? [877]

A. Yes. He offered to pay me some dues. He came to me and said to me, "Smiley," he says—there wasn't anyone around, this was out on the floor—he said, "Smiley, how about taking some of my dues," and I said, "Ollis, well, there is no use me taking any of your dues. They will send it back."

Q. Do you know when that conversation took place?

A. No, I don't, haven't the slightest idea of the date, no.

Q. Do you know when Les Ollis was laid off?

A. Yes, it wasn't then.

(Testimony of Elmer Smiley.)

Q. Do you know what month he was laid off in?

A. No.

Q. You don't know what month? A. No.

Q. Well, did this conversation take place shortly after or before he was laid off?

A. No, it took place—I believe it took place after he was fined the five hundred dollars, between that time and when he was laid off. It must have been about a month after he was fined, I would say, approximately.

Q. A month after he was fined?

A. Yes, I'd say.

Q. Did he at any other time talk to you about paying his Union dues? A. No.

Q. Is that the only occasion when he talked to you about [878] paying his Union dues?

A. That's right.

Q. Did he ever offer to pay you his Union dues or talk to you about attempting to pay his Union dues in the locker room? A. No.

Q. Did he ever offer to pay his Union dues or attempt to pay his Union dues when Clyde Scheuermann was present? A. No. Definitely no.

Q. Did he ever offer to pay his dues or attempt to pay his dues to you when Scheuermann and Groth were present? Or any other men?

A. No.

Q. Is there any other time but this one instance that you have related—

A. That is the only time.

(Testimony of Elmer Smiley.)

Cross-Examination

By Mr. Bamford: [879]

* * *

Q. Did you ever speak with Gorham about taking dues from Scheuermann or Ollis?

A. Ollis, yes. I did speak to Frank Gorham and he just—I said, “Frank, Ollis wanted to pay some dues today and I told him there was no use paying any dues,” and Frank just [880] nodded his shoulders and that is all that was said, and Frank didn’t say a word.

* * *

Q. Do you remember telling me at that time that you had spoken to Gorham about taking dues from Ollis and Scheuermann? A. Yes, I did.

Q. And you told me that Gorham had told you not to take dues from them?

A. Well, that is my fault, I grant you. I didn’t mean what I said. I didn’t mean how that sounded. In other words, when you wrote it down I said it one way and after reading it, it didn’t gibe at all. That is why I told you——

Q. You signed an affidavit, didn’t you, to that effect?

A. I signed it, yes, but I told you after that that wasn’t the way it actually happened. You don’t want me to lie, do you?

Q. No. [881]

A. All right. That is the way it was. If you

(Testimony of Elmer Smiley.)

had a Bible here I'd swear to it that is just the way it happened.

Q. Well, you are under oath, so it is the same thing. A. Well, that's true, too. [882]

* * *

Recross-Examination

By Mr. McGraw:

Q. Mr. Witness, were you ever instructed not to take any dues? A. No.

Q. How many drinks did Mr. Bamford have out there at your home that afternoon?

A. No, I didn't offer any liquor. We were out, to tell you the truth.

Mr. Bamford: I didn't hear that answer.

(Answer read.)

Q. (By Mr. Bamford): Did you read the affidavit over before you signed it?

A. Yes, I did, but you know how that is. You read it and you just glance over it and——

Q. Your wife read it over, too, didn't she?

A. Yes.

Q. And asked you some questions about it?

A. Yes.

Q. Now, about these drinks—how many did you have?

Mr. Holmes: I object to that as being outside the scope [888] of the direct.

Trial Examiner Parkes: Mr. McGraw asked about it.

(Testimony of Elmer Smiley.)

Mr. Holmes: He asked how many Mr. Bamford had, not how many the witness had.

Mr. Bamford: I started to say I overlooked in my cross-examination this matter of the number of drinks he had.

Mr. Holmes: I object to that.

Trial Examiner Parkes: Very well. You may go into the matter.

Mr. Bamford: Thank you. [889]

* * *

FRANKLIN W. GORHAM

recalled as a witness on behalf of the Respondent Union, was examined and testified further as follows:

Direct Examination

By Mr. McGraw: [894]

* * *

Q. And was that the Constitution and Bylaws that were in effect at the time that Mr. Scheuermann was tried and expelled? A. It is.

Mr. McGraw: May we have it marked as IA of M's Exhibit 1?

(Thereupon the document above referred to was marked Respondent Union's Exhibit No. 1 for identification.)

Mr. McGraw: I offer it in evidence.

Mr. Bamford: No objections.

Trial Examiner Parkes: Mr. Holmes, do you have any objection?

Mr. Holmes: No objection.

(Testimony of Franklin W. Gorham.)

Trial Examiner Parkes: IA of M's Exhibit No. 1 is received in evidence.

(The document heretofore marked Respondent Union's Exhibit No. 1 for identification was received in evidence.)

Q. (By Mr. McGraw): Now, Mr. Gorham, since that time have any changes been made in the Constitution and Bylaws? A. Yes. [895]

Q. Can you tell me approximately when they were made?

A. These changes were made effective April 1st, 1949.

Q. And were those changes published and sent to the membership of the IA of M?

A. They were.

Q. And did the membership of the IA of M—

A. They did.

Q. Can you tell us how those changes were given to the members of the IA of M?

A. There was a printed ballot sent by the International Office, sufficient copies to each local lodge for the entire membership.

Q. And were all those changes printed in any of the official organs of the International—

A. The Machinists Journal.

Q. I show you, Mr. Witness, a document and ask you if you can tell us what that is?

A. Yes, this is the Machinists Monthly Journal, February, 1949.

Q. And does that contain the proposed changes to the Constitution and Bylaws? A. It does.

(Testimony of Franklin W. Gorham.)

Q. And will you point out the pages, if you please, it appears on?

A. Pages 62, 63, 64, 65, 87. [896]

Q. And does it also contain the results of the referendum vote? A. It does.

Q. And at what pages do the results appear on?

A. 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85.

Mr. McGraw: May we have that marked as IA of M's exhibit next in order, No. 2?

(Thereupon the document above referred to was marked Respondent Union's Exhibit No. 2 for identification.)

Mr. McGraw: I offer it in evidence for the limited purpose of showing the exact changes that were proposed and voted on as intended to change IA of M's Exhibit No. 1, and to show further that this was the method by which the International Association of Machinists attempted to inform its membership of the status of its Constitution and Bylaws.

Mr. Holmes: No objection.

Mr. Bamford: No objection.

Trial Examiner Parkes: IA of M's Exhibit No. 2 is received in evidence.

(The document heretofore marked Respondent Union's Exhibit No. 2 for identification was received in evidence.)

Q. (By Mr. McGraw): Did further issues of the Monthly Journal contain the changes that were

(Testimony of Franklin W. Gorham.)

voted in by the membership of the [897] referendum vote? A. They did.

Q. And can you tell us how long those—that information was published?

A. I believe it was published during the months of March, April and May.

Q. Now, Mr. Gorham, I show you another document and ask you if you can tell us what it is.

A. Machinists Monthly Journal for April, 1949.

Q. And does that Journal contain the changes that had been voted in by the membership for the Constitution and Bylaws? A. Yes, it does.

Q. Will you tell us on what pages they occur?

A. 170, 171, 172, 173.

Mr. McGraw: May we have this identified as IA of M's Exhibit next in order?

(Thereupon the document above referred to was marked Respondent Union's Exhibit No. 3 for identification.)

Mr. McGraw: I offer it in evidence.

Mr. Bamford: No objection.

Mr. Holmes: No objection.

Trial Examiner Parkes: IA of M's Exhibit No. 3 is received in evidence.

(The document heretofore marked Respondent Union's Exhibit No. 3 for identification was received in evidence.) [898]

Q. (By Mr. McGraw): Now, following the publication in the Journal, Mr. Gorham, did the IA of M make a reprinting of this Constitution and Bylaws? A. They did.

(Testimony of Franklin W. Gorham.)

Q. Now, I show you, if you please, a document and ask if you can tell us what it is.

A. This is the Constitution of the Grand Lodge, District and Local Lodges of the International Association of Machinists amended effective April 1st, 1949.

Q. And is that the one that is now currently in effect? A. It is.

Mr. McGraw: May we have this marked as IA of M's Exhibit No. 4, if you please?

(Thereupon the document above referred to was marked Respondent Union's Exhibit No. 4 for identification.)

Mr. McGraw: I offer it in evidence.

Mr. Holmes: No objections.

Mr. Bamford: No objection.

Trial Examiner Parkes: IA of M's Exhibit No. 4 is received in evidence.

(The document heretofore marked Respondent Union's Exhibit No. 4 for identification was received in evidence.) [899]

* * *

RESPONDENT UNION'S EXHIBIT No. 4

(Portions of)

International Association of Machinists
Constitution

of the Grand Lodge, District and Local Lodges,
Councils and Conferences

Revised by the Committee on Law as recommended by the Twenty-Second Convention of

(Testimony of Franklin W. Gorham.)

the Grand Lodge of The International Association of Machinists, held in the City of Grand Rapids, Michigan, September 13 to 24, 1948, and thereafter adopted by referendum vote in the month of December, 1948, effective April 1, 1949.

Grand Lodge
International Association of Machinists

Machinists Building
Washington 1, D. C.

* * *

Article XXV
Membership Conduct and Discipline

* * *

Penalties

Sec. 2. Any member or members of any local lodge who attempt to inaugurate or encourage secession from the Grand Lodge or any local lodge, or who advocate, encourage, or attempt to inaugurate any dual labor movement, or who violate the provisions of the Constitution of the Grand Lodge, or the Constitution for Local Lodges, or any member who advocates or encourages Communism, Fascism, Nazism, or any other totalitarian philosophy, or who, by other actions gives support to these "philosophies" or "isms," shall, upon conviction thereof, be deemed guilty of conduct unbecoming a member and subject to fine or expulsion, or both.

* * *

(Testimony of Franklin W. Gorham.)

Constitution for Local Lodges
of the
International Association of Machinists

* * *

Reinstatement

Sec. 15. Any person whose membership has been cancelled may be reinstated to membership, but the application for reinstatement must be made to the lodge under whose jurisdiction the applicant is working and the regular reinstatement fee of such lodge must be paid.

If the application for reinstatement is filed in the local lodge wherein the applicant's original membership was cancelled and the application is approved, said lodge shall immediately issue a reinstatement book containing a reinstatement stamp properly cancelled, which transaction shall be entered on the monthly report of said local lodge in the same manner as initiations are entered.

When the application for reinstatement is filed in a local lodge other than that by which the applicant's membership was cancelled, then the application, after having been approved by the local lodge receiving the same, shall be forwarded by the financial secretary of said lodge, together with a fee of two dollars (\$2.00), to the General Secretary-Treasurer. Upon receipt of said application the General Secretary-Treasurer will issue a reinstatement book containing a reinstatement stamp properly cancelled, and forward same to the financial secretary of the local lodge from which the appli-

(Testimony of Franklin W. Gorham.)

ation was received, and shall thereupon transfer the reinstated member to such lodge and notify the local lodge wherein the applicant's previous membership was cancelled.

If the membership of the person applying for reinstatement was cancelled for cause other than non-payment of dues, or if there are any unpaid fines, or local, district, or Grand Lodge assessments charged against him, his reinstatement shall not be effected, nor shall his due book be issued until said causes are removed and the fines and assessments are either remitted or paid in full. All applications for reinstatement shall take the usual course.

The foregoing provisions shall not apply to persons whose membership was cancelled in lapsed, suspended, expelled or disbanded lodges. All such persons working in a locality where a local lodge exists, may be reinstated by the Grand Lodge upon making application therefor and paying the reinstatement fee charged by the nearest local lodge, which fee shall not be less than \$5.00. The local lodge shall forward the application for reinstatement, together with a fee of \$2.00, to the General Secretary-Treasurer.

* * *

Received in evidence September 18, 1950.

Mr. McGraw: May we have this marked as I. A. of M.'s Exhibit No. 5, if you please?

(Thereupon the document above referred to was marked Respondent Union's Exhibit No. 5 for identification.)

(Testimony of Franklin W. Gorham.)

Q. (By Mr. McGraw): I note on the cover of I. A. of M.'s Exhibit No. 5 for identification, Mr. Gorham, that this was approved April 19, 1946. I ask you if these are the Bylaws for Local 504 that have been in effect since that date?

A. They have.

Q. And they were in effect in 1949 when Mr. Scheuermann was tried and expelled? [900]

A. They were.

Mr. McGraw: I offer this in evidence.

Mr. Bamford: No objections.

Mr. Holmes: No objection.

Trial Examiner Parkes: I. A. of M.'s Exhibit No. 5 is received in evidence.

(The document heretofore marked Respondent Union's Exhibit No. 5 for identification was received in evidence.)

Q. (By Mr. McGraw): Now, Mr. Gorham, I direct your attention to I. A. of M.'s Exhibit No. 1 for—I beg your pardon—to I. A. of M.'s Exhibit No. 4. A. It isn't here.

Q. Will you point out, if you please, those particular sections which deal with the applications for membership, and the eligibility for membership? First the applications for membership.

A. The applications for membership first?

Q. Yes.

A. That is Article E, Section 20, page 81.

Q. And now with respect to the eligibility for membership.

(Testimony of Franklin W. Gorham.)

A. That is Section 1 of Article E.

Q. Still on page 81? A. That's right.

Q. And will you point out the particular section of the [901] Constitution that refers to applications for reinstatement?

A. Section 15 of Article E, pages 85 and 86.

Q. Now, will you also point out, Mr. Witness, if you please, those sections that deal with the trials of members?

A. Article K, page 97; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. Those are on pages 97, 98, 99, 100, 101, 102.

Mr. Bamford: Just a minute. Counsel, since Mr. Scheuermann was tried under the old Constitution, perhaps you meant to refer the witness' attention to the former Constitution rather than this one.

Mr. McGraw: I hadn't intended to, Counsel, on the theory that the relevant problem here was a question of his readmission, perhaps, and not his trial.

Mr. Bamford: Oh, I see. [902]

* * *

Q. Now, will you tell us just briefly, if you please, what the procedure is in Local 504 for handling applications for membership?

A. You mean making it out or after it is made out?

Q. How do you process—

A. After the application is made out, and made

(Testimony of Franklin W. Gorham.)

out in full, it is presented to the Local Lodge for acception or rejection.

Q. And the Local Lodge votes on it?

A. That's right.

Q. And then, is the member obligated, or what happens?

A. They are initiated after they are voted in.

Q. Now, at the time of the initiation do you furnish new members with a copy of the Constitution and Bylaws? A. Yes.

Q. And also copies of the Local Lodge Bylaws?

A. Yes.

Q. Do you require from each new applicant a pledge that they [904] will abide by the laws of the organization? A. We do.

* * *

Q. Now, to your own knowledge, has Local 504 ever adopted any special laws concerning the reinstatement of Clyde Scheuermann? A. No.

Q. Do you know of any special motions that have been made dealing with this reinstatement?

A. No. [905]

Q. Has it ever been discussed? A. No.

Q. Then, is it fair to say, Mr. Witness, that reinstatement is available to Clyde Scheuermann under the same rules as set forth in the Constitution and Bylaws that are now in evidence?

A. Yes.

Q. Do you know Clyde Scheuermann?

A. I know him when I see him, yes.

Q. How long have you known him?

(Testimony of Franklin W. Gorham.)

A. To my knowledge, approximately a year, a little over.

Q. Between meetings of Lodge 504, who are you responsible to in the performance of your duties?

A. The Executive Board and the District Lodge. The Executive Board of Lodge 504 and the District Lodge.

Q. And are you assigned to service any lodges other than 504?

A. No, not at the present time.

Q. Now, did you ever receive any instructions from the Executive Board of 504 concerning Clyde Scheuermann? A. Once.

Q. Can you tell us when that was?

A. I was instructed to prefer charges against him in, I believe, February of 1949.

Q. And you did? A. I did.

Q. Do you know Henry Smith? [906]

A. Yes. [907]

* * *

Q. Do you know Leslie Ollis? A. I do.

Q. Did you ever prefer charges against him?

A. Yes.

Q. Do you know whether anybody else did or not?

A. There was two or three other members that did.

Q. Did you ever receive any instructions to prefer charges against Leslie Ollis?

A. Yes. I may be a little mixed on this. It

(Testimony of Franklin W. Gorham.)

might be that had—that charges preferred against him by me was under instructions from the Executive Board.

Q. Now, can you tell us when negotiations were completed in 1949 for the contract that finally resulted between Westinghouse and the IA of M?

A. You mean the last day we had any negotiations or when they were accepted?

Q. Now, I am speaking of the last meeting, yes, the last meeting you negotiated with the company and prior to submission to the membership.

A. It was, I believe, the last week in September of 1949.

Q. Do you remember the day? [908]

A. I think it was the 26th, but I am not positive.

Q. And then, following that meeting, did you submit the proposed agreement to the membership?

A. Yes.

Q. Did you call a special meeting for the purpose of considering it? A. Yes.

Q. Can you tell us where this meeting was held?

A. It was held in the Labor Temple in San Jose.

Q. And can you tell us when it was held, what day? A. On October 9th.

Q. And what hour?

A. I believe it was 10:00 o'clock in the morning.

Q. And what day of the week?

A. It was Sunday. [909]

(Testimony of Franklin W. Gorham.)

Q. Now, did the membership accept or reject the agreement as proposed at this special meeting?

A. Well, it was accepted. There were a couple of—one clause that they had a choice that they themselves made as to the way they wanted it written.

Q. And what clause was that?

A. The Holiday clause.

Q. And did you ultimately change the wording of the Holiday clause to agree with the wishes of the membership? A. Yes.

Q. And when was that done?

A. It was done the following morning.

Q. And it was done before it was signed?

A. Yes. [910]

* * *

Q. Now, at any time during the negotiations did any member of the IA of M's Negotiating Committee discuss the effect of the Security clause, which is now in your contract, on Clyde Scheuermann? A. No.

Q. Did you discuss the effect of that clause on any other individual? A. No.

* * *

Q. Now, after the agreement was signed, on October 10, 1949, [912] did you make any systematic effort to check and determine whether or not employees at Westinghouse were in compliance with the Union Security Provision of the agreement? A. We did.

(Testimony of Franklin W. Gorham.)

Q. Will you tell us how you did that?

A. I obtained a list of our members working—a list of our people in our unit working at Westinghouse from the company and cross-checked them against the records of the union.

Q. What did you find?

A. We found that three people were not in good standing.

Q. And are those the same three people that were named in General Counsel's Exhibit No. 6?

Will you show it to him, please, Mr. Reporter?

(Exhibit shown to witness.)

Mr. McGraw: I have forgotten what the question is now.

Trial Examiner Parkes: Read it back, please.

(Question read.)

The Witness: Yes.

Q. (By Mr. McGraw): And what did you do about it after you discovered that these three were not in membership in accordance with the agreement?

A. We went to the company and asked them to lay them off.

Q. And that is the letter that has been identified now as—in evidence as GC 6? A. Yes. [913]

Q. How did you deliver that letter?

A. I delivered it to Mr. Goodenough personally. I was going out there to a meeting, anyhow. I took it with me rather than send it by registered mail.

(Testimony of Franklin W. Gorham.)

Q. Did you discuss the contents of the letter with Mr. Goodenough when you delivered it?

A. No.

Q. Who was present when you delivered it?

A. I believe Mr. Goodenough, and I believe also Mr. Schwartz. I am not sure whether there was anyone else in the room at the time. We had a meeting shortly thereafter. I went out there to attend a meeting. I just took the letter with me rather than send it by registered mail.

Q. What did Mr. Goodenough say when you handed it to him?

A. He didn't say anything. He read the letter. He said, "All right. We will take care of the matter."

Q. Did you have any discussion with Mr. Goodenough later concerning the contents of that letter?

A. No. You mean, during that meeting?

Q. Yes.

A. No. The only discussion I ever had with him was that he asked me to send him a letter stating that all people had an equal opportunity to become members.

Q. When did he make such a request?

A. I believe it was at the termination of the meeting. [914]

Q. And now, before you wrote this letter, GC 6, did you know, before you started to check up, as to who would be revealed as not being members of the IA of M?

A. I didn't have the slightest idea.

(Testimony of Franklin W. Gorham.)

Q. Now, at any time prior to November 11, 1949, did you ask Mr. Goodenough to discharge Clyde Scheuermann? A. No.

Q. Did you ever ask him to get rid of him?

A. No.

Q. Did you make any such similar request, or did you make a similar request to any official or representative of Westinghouse?

A. I did not.

Q. Now, did you ever have a meeting with Mr. Scheuermann with regard to his termination at Westinghouse?

A. You mean, before he was terminated?

Q. Well, at any time.

A. I had one, after he was terminated, a very brief one.

Q. And did you have any conversations with him at all prior to his termination?

A. I did not.

Q. Prior to his termination did you ever have an application for reinstatement from him?

A. No.

Q. Did he ever speak to you prior to his termination with [915] regard to how he could get back in the union? A. He did not.

Q. Now, how long after his termination was it before you spoke with him?

A. Two or three days.

Q. Can you tell us where this occurred?

A. In our office.

Q. And can you tell us how it happened?

(Testimony of Franklin W. Gorham.)

A. He came to the counter, and I believe he had made an appointment the previous day to come in at a certain time. I went out to talk to him. He told me that he wanted to make an application to join the union. I told him that I was unable to take an application from him because he did not have a job.

Q. And what else was said?

A. I believe that is all that was said that I know of.

Q. Now, when you say you went to see him, will you explain that?

A. Well, I was called out from my own office to the counter to talk to him.

Q. And so you actually talked to him over the counter? A. That's right.

Q. Now, does 504 share its office with any other local?

A. Yes, there is 1101. 1101 is also in that particular office.

Q. And the District Office, as such, uses the same place? [916]

A. It is the District Office. That is what it is. The Local shares the space in the District Office.

Q. Now, when you talked to Mr. Scheuermann, two or three days after his termination, did Mr. Scheuermann offer to pay any dues?

A. No, he did not.

Q. Did he offer to pay any fees? A. No.

Q. Did he ever offer any money whatsoever?

A. He did not.

(Testimony of Franklin W. Gorham.)

Q. Did he ask for any special consideration in order to make payments? A. He did not.

Q. Did he tell you at that time that he had been in a couple of days before and the girl had torn up an application that he had made?

A. I don't remember him saying it, no.

Q. Did any of your employees, at the union office, ever tell you that Mr. Scheuermann had come in and asked for an application?

A. I don't know whether one of the girls told me or whether Mr. Scott told me.

Q. And was Mr. Scott the one who made the appointment for Mr. Scheuermann to come in and see you? A. Yes. [917]

Q. Now, will you tell us, if you please, what your rules are in conducting your union business there by referring persons from one business agent to another?

A. Well, I don't know exactly what you mean. However, any business that one representative has is his business, and any other representative will not attempt to handle it or have anything to do with it. He will refer him to the representative who is taking care of it.

Q. Now, if I understand you correctly, Mr. Gorham, it is that when you are assigned as the business agent to service the members at Westinghouse, that any member or person who comes in from Westinghouse with any problem would be referred to you?

A. That's right.

(Testimony of Franklin W. Gorham.)

Q. And no other business agent will handle it?

A. That's right. Well, Mr. Scott may talk to him if I don't happen to be there, but he will not make any decisions or take any——

Q. Is just the reverse true if someone comes in from a plant that you do not service?

A. That's right. I won't have anything to do with it.

Q. Do you know of any application for reinstatement, from any source, from Mr. Scheuermann that ever came to the attention of the Local Lodge?

A. I do not. [918]

Q. Now, on or about November 14, 1949, did Lodge 504 have job openings then for machinists?

Mr. Bamford: Just a minute. May I have the question read back?

(Question read.)

The Witness: No.

Q. (By Mr. McGraw): And is that about the time Mr. Scheuermann came to see you?

A. Yes, it was.

Q. Have you ever issued any instructions, to anyone, not to accept an application from Scheuermann? A. No.

Mr. Holmes: I didn't understand that question. An obligation, did you say?

Mr. McGraw: Application.

Mr. Holmes: Application.

The Witness: No.

Q. (By Mr. McGraw): Does any individual in

(Testimony of Franklin W. Gorham.)

Lodge 504 have authority to reject an application for reinstatement without submitting it to the Lodge? A. No.

Q. Did you ever issue any instructions to tear up any application from Scheuermann?

A. No.

Q. Do you know of anyone else who ever issued any instructions—— [919]

A. I do not.

Q. ——to that effect? Do you know Mr. McAuliffe?

Mr. Bamford: Mr. who?

Mr. McGraw: Mr. McAuliffe.

The Witness: Yes.

Q. (By Mr. McGraw): In the normal course of your labor relations work with Westinghouse, did you have occasion to do any business with Mr. McAuliffe's office? A. Occasionally.

Q. Is that an exception rather than the rule?

A. It is.

Q. Do you remember any meeting with Mr. McAuliffe, or any meeting in Mr. McAuliffe's office when he was not present?

A. Yes, I remember the meeting.

Q. Can you tell us when that was?

A. It was in the first part of September. I believe it was September the 6th.

Q. And that is 1949?

A. That's right. [920]

(Testimony of Franklin W. Gorham.)

Q. And then, if I understand your testimony correctly, you were not on the premises of the Westinghouse Electric Corporation, Sunnyvale Plant, on September the 9th?

A. No, I wasn't anywhere near the City of Sunnyvale on September the 9th.

Q. Now, going back to this meeting which you have fixed on Labor Day, about September the 6th, did you make any remarks such as this: "Now that the contract is buttoned up I want you to discharge Floyd King, John Marovich, Pat Pachorik and Clyde Scheuermann"?

A. I did not.

Q. Did you ever make any remarks that might be construed to be similar to that?

A. No.

Q. Have you ever made such a remark at any other time or place?

A. No.

Q. Did you mention John King's name in any way?

Mr. Holmes: Floyd King.

Mr. McGraw: I beg your pardon.

Q. (By Mr. McGraw): Floyd King?

A. Not that I know of.

Q. Did you mention Marovich's name in any way?

A. You mean at this meeting?

Q. Yes, at this meeting. [924]

A. No.

Q. Did you mention Pat Pachorik's name?

A. No.

Q. Or Scheuermann's name?

A. No.

Q. Were their names mentioned by anyone else?

A. Not that I recall.

Q. Have you, at any time, asked the company

(Testimony of Franklin W. Gorham.)

to terminate King? A. No.

Q. Have you asked the company to terminate Pat Pachorik? A. No.

Q. Have you asked the company to terminate Marovich? A. No.

Q. And other than General Counsel's No. 6, have you ever asked that they terminate Scheuermann?

A. No.

Q. Have you ever attended any meeting at which the layoff of Marovich was discussed?

A. The day after he was laid off I discussed it very thoroughly.

Q. And was that in connection with a grievance?

A. It was.

Q. And where did this discussion take place?

A. As I recall, it was in the Conference Room of Building H-1. [925]

Q. And who was present?

A. I believe Mr. Goodenough, Mr. McAuliffe, Mr. Shields, and I believe Mr. Hilton was there.

Q. Mr. who? A. Hilton.

Q. And who is Mr. Hilton?

A. He is a foreman in the plant.

Q. And will you tell us just who said what, as best you can, and then—— [926]

* * *

Q. How long have you known John [932] Marovich? A. About ten years.

Q. And was that prior to 504 accepting jurisdiction over what is now the Westinghouse Plant?

(Testimony of Franklin W. Gorham.)

A. Yes. [933]

* * *

Q. Now, prior to September the 6th, 1949, that is, the date that this meeting is supposed to have occurred in Mr. McAuliffe's office, did you know that John Marovich had expressed opposition to the administration of the union?

A. Oh, yes, at various times.

Q. In fact, that was customary among active members?

A. That's right, among some of them.

Q. And did you know that he had expressed a preference for the IWW? A. I did not.

Q. Or that he criticized the union?

A. Well, lots of people have criticized the union at various times. I have myself.

Q. Did the Executive Board ever consider this expression of opposition, or this criticism on the part of John Marovich for the union, as being dangerous to the welfare of the union?

A. Not while I was there.

Q. Did they propose any action at that time?

A. No.

Q. Was any action taken? A. No.

Q. Well, if I ask you—well, strike that. Did you ever tell representatives of the Westinghouse Company, at any time, that John Marovich was a trouble-maker? A. No. [934]

Q. Did you ever tell them that he was opposed to the IA of M? A. No.

(Testimony of Franklin W. Gorham.)

Q. That he was in favor of the IWW?

A. No.

Q. That he had criticized the IA of M?

A. No.

Mr. McGraw: May we have a few minutes recess, please?

Trial Examiner Parkes: Yes, we will have a short recess.

(Short recess.)

Trial Examiner Parkes: The hearing will be in order.

Mr. Bamford: Before we proceed, I should like to at this time submit the photostatic copy of GC-11 for incorporation in the record as an exhibit and note that I have returned the original of that document to Respondent Company's Counsel.

Trial Examiner Parkes: The record may so show.

Mr. Holmes: Did you photostat the whole works?

Mr. Bamford: Yes, all pages.

Mr. McGraw: And would you read the last question before we returned? I have forgotten where we left off.

Trial Examiner Parkes: All right, please read it back.

Mr. McGraw: The last question and answer.

(Last question and answer read.)

Q. (By Mr. McGraw): Mr. Gorham, do you know Floyd King? A. Yes, I know him.

(Testimony of Franklin W. Gorham.)

Q. Prior to September the 6th, 1949, did you know that he had [935] expressed opposition to the IA of M?

A. No, I never heard him express opposition to the IA of M.

Q. Did you know that he had expressed a preference for the IWW? A. I did not.

Q. Did you know that he had criticized the IA of M? A. I presume he has.

Mr. Bamford: May I have the last answer, please? I'm sorry.

(Question read.)

Q. (By Mr. McGraw): Now, did you ever tell the company that he had expressed opposition to the IA of M? A. No.

Q. Did you ever tell them that he expressed a preference for the IWW? A. No.

Q. Did you ever tell the company that he criticized the IA of M? A. No.

Q. Was he ever called to account for any opposition or criticism? A. Not that I know of.

Q. Was he ever called to account for any preference for the IWW?

A. Not that I know of. [936]

Q. In fact—Strike that. Did you ever participate in any grievance discussions involving Floyd King?

A. No, not officially at all. We had a discussion about this 1948 Vacation Clause, but that wasn't an official grievance. [937]

(Testimony of Franklin W. Gorham.)

Q. Have any instructions ever been issued to mark the file of Mr. Scheuermann to indicate that he cannot be readmitted? A. No.

Q. Have any instructions ever been issued by you that he was ineligible to make application for reinstatement? A. No.

Q. Now, as a matter of general policy—Strike that. Will you tell us what the policy of the Lodge is with respect to admitting new members, or reinstating old members, when no jobs are available and the person applying is out of work?

A. I am not permitted to take applications from people who are not employed.

Q. And are there specific provisions in the Constitution? A. There are. [939]

* * *

Q. Have you ever handled any meetings in the cafeteria? A. No.

Q. Have you ever spoken to the employees who might be eating there in the cafeteria during the lunch period?

A. Oh, I might sit alongside one of them and talk to him. [941]

* * *

(Last two questions and answers read.)

Q. (By Mr. Holmes): Did you ever notify the company, any supervisory authority of the company, as to whether or not Clyde Scheuermann or Floyd King or Pat Pachorik or John Marovich had criticized the union? A. No.

(Testimony of Franklin W. Gorham.)

Q. Or that he had expressed opposition to the union? A. No.

Q. Or opposition to the administration in power in the union? A. No.

Q. Or that they, or any of them, had expressed a preference for the IWW Union? A. No.

Q. Did you ever authorize or instruct anybody to act on behalf of Local 504 in conveying such information to the company? A. I did not.

Mr. Holmes: That is all.

Cross-Examination

By Mr. Bamford: [950]

* * *

Q. Prior to the time that you had requested Scheuermann's discharge, if Scheuermann had tendered his dues and initiation fees to you, were you authorized to accept them?

A. Was I authorized to accept them?

Q. Yes. A. Yes.

Q. And to admit him to membership thereon?

A. I don't have anything to do with that. That is done by the Local. It is——

Q. But you'd take them, is that correct?

A. I would have to take it, yes, and submit it to the Local.

Q. When people are fined and expelled from the union, isn't it customary to require a payment of the fine before they are readmitted to membership?

A. Ordinarily, that's right. However, we could request that the fine be suspended or dropped.

(Testimony of Franklin W. Gorham.)

Q. Had you ever, on any occasion, prior to Scheuermann's discharge, instructed your shop stewards not to take dues from Scheuermann? [951]

A. No, there wasn't any necessity for it.

Q. Can you explain that answer?

A. They know that a man who is not a member can't pay dues.

Q. Or initiation fees?

A. I didn't say anything about initiation fees.

Q. I just did. A. I didn't.

Q. I did. Could they accept initiation fees?

A. Yes, they could have. They didn't at that time. The shop stewards didn't ordinarily accept initiation fees or applications.

Q. I see. That was done at the office in San Jose, is that right? A. That's right.

Q. Now, I believe you said that either of the girls or Mr. Scott had told you that Scheuermann had come in and made an application, is that correct?

A. Yes. It isn't quite that simple, however.

Q. Well, perhaps you can explain it.

A. Well, as I recall, Mr. Scheuermann come in and told the girl he worked at Westinghouse and wanted to make out an application. When she found out who it was, why, she found out there was also a letter had been sent to the company requesting his termination so she couldn't accept the [952] application.

* * *

(Testimony of Franklin W. Gorham.)

Q. Isn't it a fact that you asked Mr. McGraw about advice on this matter?

A. I don't recall for sure, Mr. Bamford, whether I did or not.

Q. Isn't it a fact that Mr. McGraw told you that if Scheuermann offered his initiation fees and dues you were not to accept [953] them, that on the other hand you were not to request the termination of Scheuermann?

A. That is not correct.

Q. Was there anything said like that?

A. No, Mr. McGraw had no authority to tell me anything of that kind.

Q. Well, isn't Mr. McGraw the representative in this area in handling NLRB matters for the IA of M?

A. That's right, but he has no authority over the Local.

Q. You have consulted him from time to time for advice in connection with NLRB matters, haven't you?

A. That's right. [954]

* * *

Q. When new employees come to work for Westinghouse, do you normally advise them of their obligations under the union shop contract you have with Westinghouse?

A. What period are you talking about now?

Q. Well, let's talk about the present time.

A. No, I don't. I don't notify anybody of their obligations.

Q. Do the shop stewards?

(Testimony of Franklin W. Gorham.)

A. They aren't instructed to.

Q. Well, do you know if they do?

A. I couldn't say.

Q. And no one makes any attempt to get them to make applications?

A. I presume that the company tells them that they have to join the union after they have been there a certain length of time.

Q. Isn't it a fact that you receive a weekly list of new employees from the Company?

A. Well, we are supposed to. We don't always receive it weekly.

Q. When you do, and your records show that the new employees have not yet made an application to join your union, you make no attempt to contact them or tell them of their duties under the contract?

A. No, because the chief shop steward also receives a list and [955] he then talks to the other stewards and they find who is members and who aren't.

Q. And then at that time the other chief shop stewards speak to the new employees, is that correct?

A. Either that or one of the other shop stewards.

* * *

Q. Do you know if any shop steward, or any other representative of the union, spoke to Mr. Scheuermann about his obligations under the October 10th, 1949, contract? A. I didn't.

Q. Do you know if anyone else did?

(Testimony of Franklin W. Gorham.)

A. Well, I think some of the stewards did, yes.

Q. Who?

A. If I recall, Mr. Nunez told me that he did.

Q. That he had spoken to Scheuermann about joining the union, is that correct?

A. Well, he discussed the contract with him.

Q. With respect to the union shop provision?

A. I presume so. [956]

* * *

Q. Did you, on any occasion during that period, have private discussions with Mr. Goodenough concerning—

A. I did not.

Q. None at all? A. No.

Q. Never called him up about the wording of any phrase?

A. No, we discussed the wording of the phrases in the negotiations.

Q. Now, to your knowledge, was any attempt made to collect dues from Gennai?

A. Attempts made?

Q. Yes.

A. We didn't attempt to collect dues from anybody. If a man wanted to pay us dues he went over and paid them.

Q. You didn't notify him that he was delinquent?

A. No, he wasn't a member at the time.

Q. Oh, Gennai wasn't a member?

A. That's right.

Q. How long had he been working there?

A. Oh, several months.

(Testimony of Franklin W. Gorham.)

Q. And no attempt was made to sign him up and get him in the union?

A. I didn't make any attempt. [961]

Q. Do you know if any attempts were made?

A. I believe he made an application out prior to April 1st but he never completed it.

Q. What do you mean, made an application out? You mean he had been working there prior—at the time the old contract was in effect?

A. I believe he had worked for Hendy and Westinghouse for about twenty years. He was an old time foundry employee. When the foundry was shut down they offered him a job in the welding department. That was shortly before the contract was terminated by the company. As I say, he made the application out but he never actually—I think he did pay a little on it but didn't pay it up.

Q. I see. Then, he made an application but he never tendered the full amount, is that correct?

A. That is correct.

Q. He hasn't been admitted to membership?

A. That's right.

Q. But his application was still standing?

A. Well, technically, that is true of anybody that ever made one. We never throw any of them away.

Q. But no attempt was made after the contract was signed to pay the rest of it—

A. No.

Q. —to your knowledge? [962]

A. That's right. [963]

(Testimony of Franklin W. Gorham.)

Q. But, in fact, didn't they keep one?

A. No.

Q. And they didn't furnish you a copy of the seniority list?

A. No, they did later but not—

Q. But not at the time Marovich was discharged? A. No.

Q. Did you know what his position on the seniority list was?

A. Not exactly. I knew he had been there several years. There wasn't any question that he was an old employee.

Q. Was there a seniority list at the meeting at which you discussd Marovich's and Ashton's discharge? A. No.

Q. There was no seniority list at the meeting, is that correct?

A. Not as I recall it. There wasn't any need for it.

Q. Why? A. Seniority wasn't involved.

Q. The company wasn't following seniority?

A. Well, not in this case. There wasn't any question about that. They admitted there wasn't.

Q. Then, it was just a discharge for cause, is that correct?

A. Well, they put it a little milder, as a release. Actually, if a man is discharged, and it shows, and he goes down for unemployment insurance, he has to wait five weeks before he can collect it. If he is just released, then, they don't have—he [971] goes

(Testimony of Franklin W. Gorham.)

down—I mean, laid off, then he can collect it after the first week. They never discharge any man, or show it as a discharge, except for some extreme reason.

Q. In this case, then, he was just an unsatisfactory employee but had done nothing in the category of a discharge for cause, is that correct?

Mr. Holmes: I think that calls for the conclusion of the witness. This is a matter of the company in its execution of its own policy.

Mr. Bamford: Would you read the question back, please?

(Question read.)

The Witness: Well, I just explained to you, Mr. Bamford, the—I don't know of any case where a man was laid off for unsatisfactory work that was ever discharged. He was released. They don't—it has been their announced policy they didn't try to rub it into him because they weren't satisfied with his work. [972]

* * *

Q. I am referring to September, 1949.

A. I know when you are referring to. As I say, I don't know.

Q. Would it be more than fifty?

A. I presume it would, yes.

Q. Don't you know for a fact that it would have been more than fifty?

A. No, I don't know for sure what it was.

(Testimony of Franklin W. Gorham.)

Q. How many members, at that time, did you have there? A. At Westinghouse?

Q. Yes.

A. Well, I am not sure. It went from over 1200 to around 400.

Q. And how many of those would be journeyman machinists?

A. I don't know because at that time Building 61 still had [978] quite a few people in it and there weren't any journeyman machinists over there.

Q. Well, how many did it have at that time?

A. What?

Q. How many did Building 61 have?

A. Well, it had 300 people in it at one time.

Q. But at the time the plant went down to 400, how many did it have?

A. Well, I think it had over 200 at that time because it was the last one to go down. [979]

* * *

Q. (By Mr. Bamford): Now, with respect to Pachorik, did you ever discuss his retention beyond seniority with the company? A. No.

Q. Did you know he had been retained beyond seniority? A. Yes. [980]

* * *

Mr. Holmes: I don't think I have any questions at this time.

Trial Examiner Parkes: Did you in the meeting with management representatives in Mr. McAuliffe's office, at the time Mr. McAuliffe was not present,

(Testimony of Franklin W. Gorham.)

state in reference to Floyd King that [981] he was one of the worst union members and not fit to be a member of any union, and further not only did you fail to discharge him but you transferred him and gave him a raise?

The Witness: I did not.

Trial Examiner Parkes: Did you characterize Pachorik as being——

The Witness: I don't recall.

Trial Examiner Parkes: Did you characterize Marovich at this particular meeting as being——

The Witness: No.

Trial Examiner Parkes: That is all I have. Is there anything else?

Mr. McGraw: I am through with this witness.

Trial Examiner Parkes: Mr. Bamford?

Mr. Bamford: No. [982]

* * *

Cross-Examination

(Resumed)

By Mr. Holmes:

Q. In your experience as the Assistant Business Agent, or in any other connection with Local 405, Mr. Gorham, in the negotiations of many labor contracts? A. I have.

Q. Have any of them, prior to this 1949 Westinghouse contract, [987] contained union shop or closed shop provisions? A. All of them have.

Q. Have any of them not contained union shop or closed shop provisions? A. No.

Q. That is, during what period of time?

(Testimony of Franklin W. Gorham.)

A. Ten years.

Q. And have all of those contracts been in this area? A. Yes.

Q. Santa Clara Valley, I mean. A. Yes.

Q. And have those contracts been subject to the ramifications or acceptances by the membership of the Local in each case?

A. All of them have, sir.

Q. What means has the Local taken on those occasions—I am speaking of the historical period—what means has the Local taken to advertise or publish the fact that the contracts contained the union shop or closed shop provisions?

A. None.

Q. Has it been customary to publish the contracts or advertise them by posting them on bulletin boards, in any case?

A. No. We, of course, ultimately published the contracts in booklet form for the membership to have copies of them.

Q. That is, as soon after the execution of the contract as was practicable? [988]

A. That's right.

Q. But prior to that, has knowledge of the contracts gone out to the members through just general conversations, or has there been some concerted effort, in any case, to advertise the fact of the union shop or closed shop contract?

A. No, as far as the union or closed shop, that was just taken for granted. [989]

(Testimony of Franklin W. Gorham.)

Q. They weren't Mr. Goodenough's notes. They were notes prepared by Mr. Goodenough's office assistant.

A. It all amounts to the same thing.

Q. Do you recall Mr. Goodenough saying that?

A. No, I don't recall that.

Q. This was the first union shop contract you had written with Westinghouse, as a matter of fact, wasn't it? A. Oh, by no means.

Q. What? [991]

A. By no means, no. We had a much stronger union shop agreement for a two year period with Westinghouse.

Q. Wasn't that a holdover from the contract with the Santa Clara Valley Employers Association?

A. By no means. Westinghouse at the time was a member of the Employers Association and Mr. McKee, their personnel representative, participated in their negotiations and signed the agreement as one of the members of the agreement.

Q. This is one of the individual contracts?

A. The first individual contract we ever signed with Westinghouse.

Q. I see. Well, did the members of the Negotiating Committee occasionally, or did you occasionally, relate to the members of 504 in the Westinghouse Plant that you were having difficulty in getting the kind of union security provision that you wanted from Westinghouse?

(Testimony of Franklin W. Gorham.)

A. Oh, I presume I did. I reported at the meetings the proceedings and the negotiations, and I probably did. I don't recall any specific instance that I did. [992]

* * *

CARL SCHWARTZ

a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McGraw: [993]

* * *

Q. Did Mr. Gorham make any proposals or propositions to the company concerning layoffs that day?

A. Well, as I remember, they were—they wanted to go on a three day, four day week, and he made a proposal that they work them one week and have them off the next week. The purpose of that was so they could get unemployment benefits for the week they were off.

Q. And did the company accept that idea?

A. No.

Q. Did Mr. Gorham make any other proposals that day?

A. No, I don't think nothing outstanding.

Q. Can you tell us, approximately, what time of the day the meeting started?

A. No, I can't.

Q. Can you tell us how long it lasted?

(Testimony of Carl Schwartz.)

A. Oh, I think it lasted about two and a half hours.

Q. And when you left did you leave some of the people there, or did everybody get up and leave at once? [997]

A. Oh, no; some left and some stayed. I didn't pay too much close attention to it. Whenever a meeting breaks up they usually don't go out.

Q. When you went into the meeting did you hear Gorham make any remarks that the agreement was buttoned up? A. No.

Q. Did you hear Gorham ask the company to discharge Floyd King or John Marovich or Pat Pachorik or Clyde Scheuermann? A. No.

Q. Did you discuss any one or all of those individuals in that meeting?

A. Well, we didn't discuss Marovich's name because he had nothing to do with his seniority. His seniority was far removed from the discussion. It was just those people that were in that period who had the less seniority.

Q. Do you know whether or not you discussed any individuals by name in that meeting?

A. Well, no. We took them all as a team.

Q. Now, did you hear Gorham say that Floyd King was the worst union man in the world, that he wasn't fit to belong to a union? A. No.

Q. Did he make any similar statements?

A. No, I never heard them.

Q. About anyone? [998] A. Oh, no.

Q. Can you tell us whether or not at this meet-

(Testimony of Carl Schwartz.)

ing the layoff of Marovich and Ashton was discussed? A. No.

Q. Now, did you hear Mr. Goodenough say, to any of the supervisors, that Gorham had been a good boy in getting the agreement finished and that they ought to try and do him a favor?

A. No. [999]

* * *

Q. And then what did you do about it?

A. I went over to ask Marovich if it was true.

Q. What did Marovich say?

A. He said, yes, it was true.

Q. And then what did you do after that in connection with his termination?

A. I made out a grievance.

Q. And did you try to find Mr. Goodenough that day? A. Yes.

Q. And did you have any particular point in mind in trying to find him?

A. Yes, I wanted to hold up the termination as long as we had [1000] a grievance. Oh, I didn't—I wanted him kept on the job until it was consummated.

Q. And did you find him?

A. No, I didn't.

Q. And did you manage to keep Mr. Marovich on the job until the grievance was disposed of?

A. No.

Q. Now, did you go back and see Mr. Marovich again before he left the plant?

A. Well, after I made out the grievance I showed it to him.

(Testimony of Carl Schwartz.)

Q. And can you tell us what was said at that meeting? What did you say and what did he say, as best you can remember?

A. I don't know. Mr. Marovich didn't go with me in the meeting.

Q. I mean, when you went to see Mr. Marovich towards the end of the day. What did you say and what did he say?

A. Well, we talked about the job and about the accusation they put on him. We talked about that and what he thought about it and what I thought about it.

Q. And did you tell Mr. Marovich that you were going to prosecute this grievance?

A. Oh, yes.

Q. And did he approve of it or disapprove? What did he say?

A. Oh, he approved of it.

Q. And then what did you do with that grievance after [1001] that?

A. I took it to the foreman.

Q. And what is the foreman's name?

A. The foreman's name is Tom Shields.

Q. And when did you take it to Mr. Shields?

A. Well, that same day, immediately, as soon as I could.

Q. And what happened at your discussion with Mr. Shields?

A. Well, he couldn't—he couldn't see it the way I saw it, and he thought the grievance should stand.

(Testimony of Carl Schwartz.)

Q. And did you argue about it? A. Yes.

Q. How long a time did you spend with him?

A. Oh, half an hour, I imagine.

Q. And did you give him any reasons why Marovich shouldn't be laid off? A. Yes.

Q. Can you tell us what those reasons were?

A. Well, I gave the reasons—well, they said that the reason he was fired that he couldn't do the job as quickly as the other shifts, and I pointed out to them that Marovich was doing most of the setups. Sometimes it is hard to find studs and things to make a setup with and tools and stuff, and probably that caused his time of taking longer on the job, and sometimes you have to wait for crane service, and that has occurred several times with different people in the shop. You have to wait and lose time, and I pointed that out to them—management and [1002] the foreman. I didn't think the termination was justified because the swing shift would come on when it was already set up and do a better job, not a better job, but a quicker job, because they don't have the problems.

Mr. McGraw: Now, may we have General Counsel's Exhibit No. 6, please?

(Exhibit handed to Mr. McGraw.)

Q. (By Mr. McGraw): Now, I show you a card and ask you if that's the grievance that you filled out, or a copy of the grievance. A. Yes, that's it.

Q. And the date there is the date you signed the grievance? A. Yes.

(Testimony of Carl Schwartz.)

Q. Now, turning over to the other side of the card, it indicates that your signature is marked there at the bottom of that section for Item No. 1. Did you finally sign the agreement at that spot?

A. Yes, I signed that as unsatisfactory, the answer that he put down there.

Q. Now, did you discuss this grievance with anyone else after this time?

A. Yes, I think either that night or that morning. I got that after I got home. I don't know whether it was in the morning or at night-time. I got that Virus X. I couldn't go to work, so I called Frank Gorham, and I asked him to process the things. [1003]

Q. And at the same time did you have a grievance for a man by the name of Ashton? A. Yes.

Q. And did you discuss that with Mr. Shields at about the same time? A. Yes.

Q. And were the results about the same?

A. Yes.

Q. And did both of those grievances involve the layoff or termination of people out of seniority?

A. Yes.

Q. Now, after you called Mr. Gorham up about it, did you give the cards to Mr. Gorham?

A. I don't—

Q. I believe you had the grievance cards when you finished talking to Mr. Shields, didn't you?

A. I can't remember how he got them. I thought I called him up on the 'phone and told him to process it.

(Testimony of Carl Schwartz.)

Q. Now, did you have anything further to do with those grievances after you had taken care of the first step or two in the grievance procedure?

A. No, I didn't have anything to do with that.

Q. Were you present when the final argument took place concerning those grievances?

A. No. [1004]

Q. Now, can you tell us how you learned about Mr. Ashton's termination?

A. Well, the foreman over there made—had been complaining about him and finally he made a termination out for him.

Q. Had you heard any complaints from the foreman concerning the work of Mr. Marovich before his termination?

A. Yes. [1005]

* * *

Q. Did he ask you to do anything about it?

A. No.

Q. Did you talk to Mr. Marovich about it and tell him that he was too slow?

A. I don't remember.

Q. Now, in the processing of this grievance for Marovich, did you tell the company, or any representative of the company, that Marovich was opposed to the IA of M?

A. No.

Q. Did you tell them that he was in favor of the IWW?

A. No.

Q. Did you tell them that he criticized the IA of M?

A. No.

(Testimony of Carl Schwartz.)

Q. Did you tell the company that Marovich criticized— A. No. [1006]

Q. Did you ever tell the company anything along those lines about anything of Marovich?

A. No.

Mr. Holmes: By "the company," you mean any supervisor or foreman?

The Witness: That is what I assumed.

Mr. McGraw: That is what I meant to say: any representative of the company, foreman, assistant foreman or superintendent or personnel man.

Q. (By Mr. McGraw): You consider Marovich to be a personal friend of yours? A. Yes.

Q. Did you ever try to get Marovich to be a steward for you? A. Yes.

Q. Can you tell us when?

A. That was just after 504 took over the plant as representatives. I went to him and asked him if he would be a steward.

Q. And did he decline? A. He declined.

Q. Now, Mr. Schwartz, do you know anything about the termination of Clyde Scheuermann?

A. Yes.

Q. How did you first learn anything about Clyde Scheuermann's termination?

A. Well, we were in Goodenough's office and the request was [1007] handed to Mr. Goodenough by Mr. Gorham.

Q. Mr. Gorham handed him a request?

A. Yes.

Q. Do you know when this was?

(Testimony of Carl Schwartz.)

A. I think it was November 11th, if I remember correctly.

Q. And who else was there in Mr. Goodenough's office at that time?

A. I was there, Frank was there, and Goodenough was there. I think just the three.

Q. Did anybody come in while you were there?

A. Well, I can't remember that. People dropped in and out sometimes while we were there in conference.

Q. What was the reason you were there, do you remember?

A. The processing of grievances, I think.

Q. Do you know whether or not Mr. McAuliffe came in and attended that meeting?

A. No, I don't remember.

Q. Do you remember what the subject of the grievance was, or who it was?

A. Right now I can't remember what it was.

Q. Did any discussion take place between Gorham and Mr. Goodenough, at that time, concerning the contents of this letter?

A. Yes, he said something about it. I don't recall what the exact words were. [1008]

Q. Who said it, do you know?

A. Well, Gorham and Goodenough talked about it just briefly.

Q. Now, did you see the letter at that time?

A. Yes, I saw the letter.

Q. When did you see it?

A. When Mr. Gorham gave it to Mr. Goodenough.

(Testimony of Carl Schwartz.)

Q. Well, did you read the letter at that time?

A. No.

Q. Have you ever read the letter? A. Yes.

Q. Do you remember when you read it?

A. Yes, it was when Gennai—Gennai's name was on that letter. He was requested to be terminated too, and, in the meantime, we had found out that he had tried to get—well, tried to get in touch with the steward and pay up. He was delinquent. We asked to have it quashed—taken off—because as long as he had tried to pay the steward we thought that he shouldn't have been terminated. He asked Mr. Good-enough to take his name off.

Q. And did you cross out Mr. Gennai's name and initial it or sign it?

A. Yes, I think I remember—yes, I think I remember doing that. [1009]

* * *

Q. Have you ever participated in any grievances concerning Floyd King? A. No.

Q. Have you ever discussed his layoff status with anyone?

A. No. We discussed it with the group that we mentioned in Mr. McAuliffe's office. Going over lay-offs, we discussed it then.

Q. Now, did you ever tell the company that Mr. King was opposed to the IA of M? [1011]

A. No.

Q. Or that he criticized the IA of M?

A. No.

(Testimony of Carl Schwartz.)

Q. Or that he was in favor of the IWW?

A. No.

Q. And by "the company," I meant my question to be any supervisor or representative of the company. Is that the way you understood it?

A. That's right.

Q. Do you know whether or not Mr. King was retained out of seniority? A. Yes, he was.

Q. Do you know whether or not Mr. King was transferred by the company so that they could keep him? A. Well, I don't think—

Mr. Holmes: I think that assumes something—

The Witness: I don't know whether he was transferred. I remember the occasion.

Trial Examiner Parkes: Wait a minute. He is withdrawing the question.

Q. (By Mr. McGraw): Do you know whether or not Mr. King was transferred?

A. Yes, he was.

Q. Can you tell us where?

A. He was transferred to the Maintenance Department. [1012]

Q. And, now, did you discuss that transfer with anybody? A. Yes.

Q. Can you tell us who it was and when it was that you discussed it? A. McAuliffe. [1013]

* * *

Q. Now, what was the union's general position with respect to the application of seniority?

A. Well, we thought seniority was the thing to

(Testimony of Carl Schwartz.)

work on, that the most important thing in the contract was seniority.

Q. And every time the company did something out of seniority, did you try to do something about it?
A. Yes.

Q. And it didn't make any difference who it was, did it?
A. Oh, no.

Q. Did you ever tell the company that Pachorik was opposed to the IA of M?
A. No.

Q. Or that he had criticized the IA of M?

A. No.

Q. Or that he was in favor of the IWW?

A. No.

Q. Do you know of any union representative that ever told the company anything like that?

A. No, I don't.

Q. Now, Mr. Schwartz, when you concluded your negotiations with the company, in 1949, was there a special meeting of the members to consider that agreement?

A. Before it was signed, you mean?

Q. Yes. [1015]

A. Yes, it was read out at the meeting and it was explained to the membership what each part of the agreement meant.

Q. Now, do you know whether or not any notices were sent out announcing that meeting?

A. Well, I don't remember whether the notices were sent out. They usually were, but the stewards were instructed to contact everybody they could and tell them to be sure to be there. That was the——

(Testimony of Carl Schwartz.)

Q. And were there any notices put up in the shop for people to see, advising them of that meeting?

A. I don't remember whether that particular meeting—there usually was. I don't remember if there was, distinctly, for this meeting or not.

Q. Did you see any notices at the tool crib?

A. Yes, it is always customary when there is a meeting to put a notice in front of the toilet and in front of the tool crib, the two tool cribs, one at each end of the building.

Q. And did you receive any instructions from Mr. Gorham to be sure and tell everybody about the meeting?

A. Oh, yes.

Q. And you gave similar instructions to all the other stewards?

A. Uh-huh.

Q. And did you have occasion to discuss the meeting that was held, by the members of 504, with anybody who wasn't there?

A. Oh, yes. [1016]

Q. In fact, the stewards frequently discuss the results of meetings with people at the plant, don't they?

A. Yes, people at the plant. This is a steward's duty, to report what goes on at the meetings. [1017]

* * *

Q. And prior to that time, when a person wanted to make an application, they had to go down to the union office?

A. Yes.

Q. And it was true of reinstatements, wasn't it?

A. That's right.

* * *

(Testimony of Carl Schwartz.)

Q. (By Mr. McGraw): Mr. Schwartz, prior to the 1949 agreement with Westinghouse, did the IA of M ever have any provisions for dues deductions by the company? A. No.

Q. Did you provide for such matters in the 1949 contract? A. Yes.

Q. Now, after the agreement was signed, on October the 10th, did the stewards go around through the shops soliciting signatures on dues deduction authorization cards? A. Yes.

Q. And were any instructions issued to the stewards about that?

A. Yes, they were told to—it wasn't mandatory—but to ask them all, if they wanted to have those deductions, they could, and, if they didn't, they didn't need to. [1018]

Q. Do you know whether or not the stewards did that? A. Yes, they did.

Q. Did you personally contact a number of people in soliciting dues deduction cards to be signed? A. Yes. [1019]

* * *

Q. Now, did you ever prefer charges against anybody in the union? A. Yes.

Q. Can you tell us who it was?

A. Well, I preferred charges either against Mr. Ollis or Mr. Scheuermann. I can't remember which one. I know I had preferred charges against one.

Q. About when did you do that?

A. You've got me.

(Testimony of Carl Schwartz.)

Q. Well, was it in 1949?

A. It was in 1949.

Q. Was it the first part, middle part or the last part?

A. It was after—no, it was the last part, towards the last part. It was—no, wait a minute. It was during this period where they tried to start another union.

Q. And did other people prefer charges against him, too? A. Yes.

Q. Now, in your experience as a steward at Westinghouse, have you ever known any member of the IA of M who was disciplined by the union because he disagreed with the opinions of the business agent or the officers of the union?

A. No. [1020]

Q. Do you know of any members who were disciplined because they disagreed with the policies of the union? A. No.

Q. Do you know of any person at Westinghouse, at any time, who has lost their job because they opposed the IA of M? A. No.

* * *

Cross-Examination

By Mr. Holmes: [1021]

* * *

Q. Did they do that during the course of the working hours? A. Yes, they did.

Q. Did they turn cards signed over to you?

A. Yes, they did.

(Testimony of Carl Schwartz.)

Q. And you made some arrangements with Mr. Goodenough's office, or with the foreman, to carry on that activity? A. Yes.

Mr. Bamford: Excuse me. I didn't hear the question. May I have it, please?

(Question read.)

Q. (By Mr. Holmes): Was it in Mr. Goodenough's office or the foreman's office?

A. In Goodenough's office.

Q. Do you know how long that went on?

A. It was going on all the time.

Q. Well, did it start right after the contract was signed? A. Yes.

Q. And it is continuing at the present time?

A. Yes.

Mr. Holmes: I think that is all.

Q. (By Mr. Bamford): On the check-off sheets, Mr. Schwartz, the check-off slips rather, would the other stewards turn them over to you?

A. Yes.

Q. I see. And then you turned them over to Mr. Goodenough, is [1024] that correct?

A. No, I would turn them into the union office, gave them to Mr. Gorham.

Q. Now, when did you start this program of soliciting check-offs?

A. That was just immediately after the contract was signed.

(Testimony of Carl Schwartz.)

Q. Did you have a supply of check-offs?

A. Yes. [1025]

* * *

Q. There were none?

A. I don't remember.

Q. I see. Normally, are you informed as to when a member becomes delinquent by Mr. Gorham?

A. Sometimes the girl tells me.

Q. At the office? A. Yes.

Q. And at that time you then make an attempt to contact the employee, is that correct?

A. Yes, and see what is the trouble. If he is in a certain steward's department, I tell the steward to go out to this man, and he takes care of that. That probably happened in Cleveland Norris' case. Sometimes I don't know the particulars of the issues. I turn it over to the steward who is in charge of that department. [1030]

* * *

LOUIS NUNEZ

a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McGraw:

Q. Will you state your complete name, please, for the record? A. Louis C. Nunez.

(Testimony of Louis Nunez.)

Q. Where do you work? A. Westinghouse.

Q. And how long have you been working there?

A. About two and a half years.

Q. And do you have any position with the IA of M? A. I am the steward on the swing-shift.

Q. And do you know Clyde Scheuermann?

A. I do.

Q. Does he work on the same shift that you do, or did he? A. He did.

Q. Have you ever talked to Mr. [1057] Scheuermann? A. I did.

Q. Was that frequently or infrequently?

A. Oh, frequently.

Q. Now, after the union shop election was held in 1949, did you have occasions to have any conversations with Mr. Scheuermann?

A. I did after he come back—back from—come back to work.

Q. And can you tell us approximately how many conversations you had with him?

A. A couple of times, I imagine.

Q. And can you tell us, approximately, when those conversations occurred?

A. I couldn't be hardly definite on the time but it was after our contract was signed that he come back to work.

Q. And what did you discuss with him?

A. The terms of our contract.

Q. And was this after the union meeting in which

(Testimony of Louis Nunez.)

the contract had been ratified? A. Right.

Q. And did you discuss the union security provision of the contract? A. Yes.

Q. And did you discuss the seniority provisions of the contract? [1058]

A. More or less the seniority provision. We discussed that quite often.

Q. And did you discuss the wage administration clause with him?

A. Yes, the discussion come around on the classification of machinists.

* * *

Q. Did Scheuermann ever ask you anything concerning his reinstatement in Lodge 504?

A. Well, it was something to that effect, but I don't remember the exact words at the time.

Q. Can you tell us what the substance of the conversation was?

A. Well, it was similar to being fined, or something to that effect at that time.

Q. And what did you tell him?

A. I told him at the time that I didn't know. He had to see our assistant business agent.

Q. Is that Mr. Gorham? A. That's right.

Q. Did you distribute any dues deduction authorization cards [1059] among the people on the night-shift? A. I did. I still do.

Q. And did you contact Mr. Scheuermann with regards to dues deductions before he was laid off or terminated?

(Testimony of Louis Nunez.)

A. We discussed it, but I don't think I contacted him in that respect as to the deduction of dues.

Q. Now, in your experience there at Westinghouse, have you ever known any member of the union who was fined by the union for criticizing the union?

A. No, we have a free vocal as long as we go—in other words, we have—in other words, we cuss there just like anybody else.

Q. And as a steward did you ever discuss with any representatives of management, or tell any representative of management, that Scheuermann was hostile to the IA of M? A. I did not.

Q. Did you ever discuss any of his union activities with management at any time?

A. I did not.

Q. Do you know Pat Pachorik?

A. I know him by sight.

Q. You never worked with him?

A. No. I work in a different department.

Q. And a different shift, too, I believe?

A. Yes. [1060]

Q. When did you first know that Mr. Scheuermann was being terminated?

A. I think it was the evening of the time he was terminated, of the day he was terminated. I don't know much about it.

Q. Did he come up to you and say anything about it?

A. No, I didn't see Mr. Scheuermann that evening.

(Testimony of Louis Nunez.)

Q. Have you ever discussed it with him since then?

A. No, I don't think I have seen Mr. Scheuermann. I run into him once, but he just said, "Hello," and that is all.

Q. Now, did you see any notices posted around the shop advising the members of 504 that there was going to be a meeting to discuss the contract?

A. Yes, I posted them myself.

Q. And did you talk to various people on the night-shift, telling them about the meeting?

A. About 90 per cent of them.

Mr. McGraw: That is all.

Cross-Examination

By Mr. Holmes: [1061]

* * *

Q. Well, just tell us in substance what was said.

A. The substance was that he come back to work and how he was doing and so forth; discussed the contract we had. He says, "What kind of a contract do we have?" I gave him the highlights of the contract, because it takes hours to discuss the whole thing.

Q. This was right after he came back to work?

A. Right after he come back to work.

Q. And you also discussed the contract with him, again, on another occasion, is that correct?

A. I think a week or so later. I don't remember just exactly the length of time between those two

(Testimony of Louis Nunez.)

encounters we had. We never was too—we stopped and discussed—the general discussions—who was on the shop at the time—like the check-off system. He said he didn't like it, and I didn't like it either at the time.

Q. And that the election—— A. Yes.

Q. And that the election—Withdraw that.

A. Yes?

Q. It was right after that that you had these discussions, is that right?

A. That's right, after the election. [1063]

Q. And right after he came back to work?

A. That's right. [1064]

* * *

The Witness: As I said before, I don't know whether he was expelled, but it was six months before he—was that I knew he was fined.

Q. (By Mr. Bamford): He tried to pay his dues six months——

A. Before anything of that kind, before even anything that I knew about it. He just offered me to pay \$2.50 for dues and I took them. He come to my machine and offered them. [1075]

Trial Examiner Parkes: What was the year this happened?

The Witness: '49.

Trial Examiner Parkes: What part of '49?

The Witness: It was in the winter of '49. I couldn't remember just exactly. Probably in January, February, sometime at that time. [1076]

* * *

FRANKLIN W. GORHAM

a witness called by and on behalf of the Respondent Union, having been duly sworn, was recalled and testified further as follows: [1080]

Redirect Examination

By Mr. McGraw:

* * *

Mr. McGraw: May we have this marked for the purpose of identification, if you please?

(Thereupon, the document above referred to was marked Respondent Union's Exhibit No. 7 for identification.)

Q. (By Mr. McGraw): Now, Mr. Gorham, I direct your attention to this side marked No. 2. Will you tell us what each of those columns stand for, what the information indicates or is?

A. Starting from the lefthand side, the dates on which the dues were received, a receipt number, number of months paid, the last month paid, the amount paid and the month that it was reported to the International. There's some pencil marks in the column under "Assessments" and those are the names, pencilled in, of the person who collected the dues. [1081]

Q. All right. Now, can you tell from that card when Mr. Nunez collected some dues from Scheuermann?

A. Yes, on the 31st day of March he collected for the month of January, one month, the sum of \$2.00.

Q. What year was that? A. 1949.

(Testimony of Franklin W. Gorham.)

Q. Now, does this card indicate the present status of Mr. Scheuermann with respect to the IA of M? A. Yes.

Q. And where is that and what does it say?

A. On the right hand side of the card, in a rather large box it contains the words, "Expelled 4-49."

Q. Is there anything on the card that indicates the amount of his fine? A. No.

Q. Should there be? A. Yes.

Q. Who normally makes a notation on the card?

A. The office girls.

Q. Now, next to the column which you have testified was the last month paid, I note—I notice some little markings of some kind. Can you describe those markings and tell us what it means?

A. Above the month, or next to it, those indicate that in each one of those months he was—he was in the third—he [1082] would have been delinquent by the first day of the following month and a notice was sent to him by mail.

Mr. Bamford: I should like to move that that answer be stricken as irrelevant.

Trial Examiner Parkes: I am trying to recall his testimony. I believe it is sufficiently relevant to Mr. Nunez's testimony to justify its admission into evidence. The motion to strike is denied.

Mr. Holmes: It is previously in the record that Mr. Scheuermann waited until the last day before he paid one month's dues.

Trial Examiner Parkes: I believe that was his testimony. However, we are now confronted with

(Testimony of Franklin W. Gorham.)

surrebuttal, whatever you might call it. We have taken Mr. Gorham out of order. The record might also show that we had no other witnesses available at the present time.

Q. (By Mr. McGraw): Now, does this card indicate his address at the time that his membership was terminated? A. Yes.

Q. And does it also indicate the prior lodges that he belonged to? A. Yes.

Q. Now, will you tell us briefly what is on the other side of the card?

A. It is identical with the side marked "No. 2." It is merely [1083] for an earlier period.

Q. And does that reflect the complete record dues—dues record of Mr. Scheuermann with Lodge 504? A. Yes. [1084]

* * *

LESLIE OLLIS

a witness called by and on behalf of the Respondent Union, being previously sworn, was examined and testified as follows:

Redirect Examination

By Mr. McGraw: [1088]

* * *

Q. What was your answer?

A. I said I hadn't worked on the garage. I loaned her a cement mixer.

Q. And do you know who did the work on the garage?

(Testimony of Leslie Ollis.)

A. I know Clyde worked at least part of the time on it.

Q. Is that Clyde Scheuermann?

A. That is Clyde Scheuermann, yes.

Q. Now, I believe you testified a few days ago that previous to belonging to Local 504 you had joined one of the machinists' lodges in the San Francisco Bay Area, is that correct?

A. Aeronautical and Production Workers with Anthony Ballerna, I believe the name was.

Q. B-a-l-l-e-r-n-a. Now, I show you this card and ask you if you can tell us what it is.

Mr. Bamford: May I see it, Counsel, please, before the witness does?

Mr. McGraw: You may.

The Witness: I don't recall signing it but this is—I don't doubt that it is quite obviously an application, or a form that I filled out. [1089]

Q. (By Mr. McGraw): Is that your signature at the bottom?

A. It certainly looks like it.

Q. And did you ever use green ink in your pen?

A. Well, I may have. I certainly haven't used it for years.

Q. And is that date of September 19th, 1941, approximately correct?

A. Well, it could be correct. It was previous to the war. [1090]

* * *

MALCOM R. NELSON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bamford:

* * *

Q. In 1949, were you employed at Westinghouse, Sunnyvale Plant? A. Yes.

Q. For the entire year? A. Yes.

Q. What shift did you work that year?

A. Day shift.

Q. What was your job?

A. For the full year of '49?

Q. Yes.

A. I was working as a journeyman on assembly until August the 1st, when I was transferred to maintenance.

Q. And you remained on maintenance for the balance of the year? A. Yes, sir.

Q. Where was your locker situated? [1109]

* * *

The Witness: My locker is off in the assembly—Building 41.

Q. (By Mr. Bamford): Did Clyde Scheuermann and Les Ollis have their lockers near yours?

A. They were right close by mine.

Q. Was Elmer Smiley's locker near there?

A. Yes, very close. [1110]

* * *

(Testimony of Malcom R. Nelson.)

Q. On any occasion, following June 1st, 1949, did you ever see Les Ollis try to pay dues to Elmer Smiley?

A. How do you mean by "see"? I don't rememehr seeing any money transacted. He offered to pay dues.

Q. Did this occur on one occasion or on more than one occasion?

A. I would say more than one.

Q. How many to your memory?

A. I don't know.

Q. Do you remember if Clyde Scheuermann was present on any of these occasions?

A. Yes, I'd say Clyde was present.

Q. Does any particular occasion fix itself in your memory?

A. Well, there was one time in the locker room when Smiley and Ollis went at it a little heavier than usual, and we couldn't help but all of us remember that.

Q. Well, can you remember how the incident arose?

A. No, there was so much kidding about it anyway. I don't know how it got started. [1115]

Q. How do you mean "kidding about it"?

A. There was joking around about a new union and being fined and not paying dues, and the rest of us paid and they could get by for nothing.

Q. Did you participate in any of that kidding yourself?

(Testimony of Malcom R. Nelson.)

A. Well, I usually don't keep my mouth shut when I ought to.

Q. Well, do you remember what Ollis said and what Smiley said on this occasion?

A. No, only that this is one of the times that Ollis offered to pay dues.

Q. Well——

A. But I don't remember seeing him dish out the money.

Q. Do you remember what Smiley said when Les made that offer?

A. Not the exact words, but Smiley's stand was the same every time: that under the I. A. of M.'s business laws there was a fine imposed and he couldn't pay them. He couldn't accept the dues.

Q. Do you remember if Scheuermann was there on that occasion?

A. At the time that Ollis and Smiley——

Q. Yes. A. ——got angry?

Q. Yes. A. Yes, Clyde was present.

Q. Do you remember if anyone else was present?

A. Well, it was wash-up time. The locker room was fairly full. I couldn't say just how many or who was in there. [1116]

Mr. Bamford: No further questions.

Cross-Examination

By Mr. Holmes:

Q. Mr. Nelson, with whom have you talked about this testimony? A. How do you mean?

Q. Well, have you discussed this matter with

(Testimony of Malcom R. Nelson.)

anybody, these things you have just testified to?

A. Well, certainly, we have been talking about these things in the plant ever since they started the first time the witnesses have gone out.

Q. Have you talked about Mr. Scheuermann recently?

A. I haven't seen Scheuermann until——

Q. Have you seen Ollis lately?

A. I haven't talked to him about it.

Q. Do you remember talking to me about it?

A. Yes, sir.

Q. Do you remember telling me that you didn't know whether Mr. Ollis had ever offered his dues or not?

A. Didn't I tell you that I had never seen the money dished out, but that he had eventually offered to pay him?

Q. Didn't you tell me that you didn't see any offer to pay dues in the locker room?

A. No, as I remember I told you that it was more than once that he offered to pay. You said that he had only testified to the fact that he offered to pay once, and I said I recalled it being more than once. [1117]

Q. Didn't I tell you that Mr. Ollis had testified to an incident in a locker room? Didn't you tell me that you didn't recall such an incident?

A. I don't remember saying that. It seems to me I told you that I could remember once when he offered to pay out at Smiley's chest, and that there was an incident in the locker room.

(Testimony of Malcom R. Nelson.)

Q. You told me about an incident near Smiley's tool box or something. Didn't you tell me that was the only one you could remember? A. No, sir.

Q. You testify now that Mr. Ollis offered to pay dues, is that right? A. Yes, sir.

Q. Did somebody tell you about that?

A. No, sir. That was common talk. I told you that in the office.

Q. Was that common talk around the plant?

A. Certainly.

Q. Was that how you heard of it?

A. No, I heard it. I was in the locker room.

Q. I am not talking about the locker room; I am talking about the incident on the floor. You said there was more than one incident when Mr. Ollis offered to pay dues; is that right?

A. Yes, sir. [1118]

Q. Now, where did they take place?

A. Well, what did I tell you in the office?

Q. Well, I am asking the questions here. I am in a privileged position.

A. I said once was in the locker room.

Q. Well, I am asking you about incidents other than in the locker room.

A. And I said once was out at the tool box.

Q. All right. Are there any other occasions?

A. I don't remember any more. [1119]

* * *

Q. Now, just exactly what was said, so far as you can remember, on this occasion in the locker room?

(Testimony of Malcom R. Nelson.)

A. I can't remember exactly what was said in a locker room a year ago.

Q. Tell me, as best you can remember. I realize that it is a year ago and you haven't thought about it.

A. I hadn't thought about it until I was slapped in the face with it.

Q. How were you slapped in the face?

A. I don't know.

Q. I ask you what you knew about it, is that right? A. Yes, sir.

Q. You told me that your memory was pretty vague about it, didn't you? A. Yes, sir.

Q. You told me that you couldn't remember very much about it, isn't that right?

A. I said I couldn't remember much about what was said in actual words or——

Q. All right, now. You have had a few days to think about it. Do you remember anything that was said in that locker room on [1124] this occasion?

A. A man's mind can freshen up a little, but I don't remember what the conversation was, no.

Q. Do you remember anything at all as to what was said? A. Not the exact words.

Q. In substance?

A. In substance, he offered to pay his dues.

Q. How did he say that?

A. No, I don't——

Q. Did he say, "Why don't you take my dues?"

A. I don't remember what words he used.

(Testimony of Malcom R. Nelson.)

Q. Did he say, "I will give you my dues right now?"

A. I don't remember what words he used.

Q. Do you remember anything Mr. Smiley said?

A. Not exact words.

Q. Well, in substance?

A. In substance it was the same. I imagine he told you the same thing. He couldn't accept it under the Bylaws of the IA of M.

Q. He referred to the Bylaws of the IA of M?

A. I don't know if he went into detail at that time or not. Different things were brought into detail at the time. [1125]

* * *

Q. Well, I think you did. I want you to clarify it. If you didn't, you are free to change your answer. Do you know whether this locker room incident occurred before or after August the 25th?

A. No, I don't know whether it happened before or after.

Q. Do you know when the new contract was ratified by the union? A. Not exactly.

Q. Did you attend the meeting at which the contract was ratified or accepted?

A. The union meeting?

Q. Yes, on a Sunday morning?

A. Yes, sir.

Q. A Sunday morning at the Labor Temple?

A. Yes, sir. [1127]

Q. Do you know whether this locker room incident occurred before or after that?

(Testimony of Malcom R. Nelson.)

A. I don't remember that.

Q. You don't know? A. No.

Q. You don't know one way or the other?

A. No.

Q. Would it refresh your recollection if I told you that this union meeting, at which the contract was accepted, took place on October 8th or 9th?

A. No, I don't remember when it took place.

Q. Now, with respect to the date October 8th or October 9th, do you know when this locker room incident took place? Was it before or after?

A. I don't know whether it took place before or after.

Q. Was anything said at that time about union initiation fees? A. How do you mean that?

Q. Well, was the term "initiation fees" mentioned at all, or was the conversation limited to dues?

A. The incident in the locker room between Ollis and Smiley?

Q. The incident that you have testified about.

A. They were talking about dues.

Q. Is that the only term that was used?

A. That is the only one I remember. There may have been [1128] more.

Q. Was there any money offered?

A. I don't remember any money being offered.

Q. Where was Scheuermann with respect to Smiley and Ollis? How far away was he?

A. Well, the aisle is about three foot wide between the lockers there, and his locker was right

(Testimony of Malcom R. Nelson.)

behind mine. I don't suppose he was over two or three feet.

Q. That is, across the aisle from yours?

A. Yes, sir.

Q. Where is Smiley's locker from yours?

A. Well, it is—if my directions are right—west. It is down the aisle about, oh, maybe eight or ten lockers, approximately that is.

Q. Lockers about a foot wide or more?

A. About a foot.

Q. And Smiley's locker is about eight or ten feet from yours? A. Approximately, yes.

Q. And Scheuermann's is right across the aisle?

A. Yes, right across the aisle.

Q. Across the aisle from you. Where was Ollis' locker. Where was it?

A. As I say, it was right next to Clyde's.

Q. Right next to Scheuermann's, is that it?

A. That's right, the way I remember it. [1129]

Q. Is it on the side toward Smiley or away from Smiley?

A. I don't know what side it was on and—

Q. And were Smiley and Ollis shouting at each other?

A. I don't remember if they were shouting. I did say their voices was louder than usual.

Q. They were talking in a loud voice, then?

A. They were a little hot under the collar and they spoke a little louder than usual.

Q. Yes. Were other people in the locker room talking?

(Testimony of Malcom R. Nelson.)

A. Sure, everybody is talking in the locker room.

Q. Now, do you remember anything that Ollis said, specifically?

A. Well, only that he offered to pay his dues.

Q. That is your conclusion. I want to know what was said.

A. I don't remember the exact words.

Q. Did he just make one statement: "I offer you my dues," and then Smiley says, "I wont take them," is that all that happened?

A. I think there was a little more discussion than that. [1130]

* * *

Mr. Holmes: I wish at this time to renew my motion to dismiss the complaint in its entirety, and, in the alternative, to dismiss the complaint insofar as it alleges an unfair labor practice with respect to John Marovich, and again in the alternative insofar as it relates to any unfair labor practice involving Mr. Clyde W. Scheuermann. I would like to say just a few words in addition to what I have already said, and I direct it particularly to the Marovich case.

I think that it is very clear upon the record, now that it is completed, even clearer I should say than it was at the time I first addressed this motion to the Trial Examiner, that the allegations of the complaint are not sustained by any substantial evidence; that the evidence clearly shows that there is no evidence of unfair labor practices insofar as John

Marovich is concerned; that his discharge was for a good or sufficient [1137] cause, or rather, that his release was for a good and sufficient cause, completely in accordance with the custom and practice of the company; that it was not in collusion with the union or demanded or requested by the union in any respect; that since it had no connection with anything—any relationship that Marovich may have had with the union, that it was clearly a release in the normal course of business and without any intention or motive to interfere in any way with the rights of employees.

The employer is entitled to lay off or terminate or release an employee when he is unsatisfied due to his quantity of production, and this was clearly a release for that reason. Whether or not the employer used good or bad judgment in determining that is beside the point. The point here is that the employer acted in complete faith in that regard and was not motivated in any respect in any regard to Marovich by any consideration of his union activities or lack of them.

With respect to Mr. Scheuermann, I think that, in addition to what I have previously said, the evidence is now clear that Mr. Scheuermann had knowledge of the contract in 1949; that he knew of his obligations under that contract, and that he did not undertake in any way to discharge those obligations; that he was working there in the hope that he would be ignored by the union and in the expectation that the union would be afraid to do anything, even though he failed to discharge his obligations [1138] under the contract; he was further

working there under the mistaken apprehension that he was fully protected by the law. Now, he was mistaken in that, of course. He is bound by his error in that regard even though he may have been mistaken as to his understanding or interpretation of the law. The law is clear, and he is assumed to know its provisions. So, whether he felt that the law would protect him is beside the point. He had obligations under the contract. It is a perfectly legal contract.

No question as to its validity has been raised here and his discharge after the 32nd day after its execution is a completely legal discharge within the terms of the Act.

I don't think I need to belabor the point here. I think it is sufficiently clear that there is no obligation on an employer to go to 1,000 or 1,500 employees and specifically tell each one that he has only thirty days or twenty-nine days or one day to join the union. There was sufficient knowledge around that plant and sufficient subjected knowledge on the part of Mr. Scheuermann that he, as a reasonable man, was under the obligation to at least see what he could work out with the union. Then, if the actions of the union were unsatisfactory, to pursue it with management. He, knowing of his obligations and expecting to ride along because he was somehow untouchable, did nothing.

I think that is enough for the motion to dismiss. If it is [1139] denied, I shall pursue it in the brief.

Trial Examiner Parkes: I shall reserve ruling upon your motion to dismiss.

Mr. McGraw: I want to make a motion to dismiss, Mr. Trial Examiner, the complaint in its entirety insofar as the union is concerned or in the matter of several alternatives insofar as the complaint pertains to each of the individuals named; namely, John Marovich, Clyde Scheuermann, Floyd King and Pat Pachorik, taken either as individuals or a combination of those individuals. [1140]

* * *

EARL B. SCOTT

a witness called by and on behalf of the Respondent Union, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McGraw:

* * *

Q. And what is your official capacity with the IA of M? A. Business Representative.

Q. And for any particular unit?

A. For District Lodge 93 of the IA of M.

Q. And does that also include Lodge 504?

A. It does. [1158]

* * *

Q. Do you know Clyde Scheuermann?

A. I do.

Q. Can you tell us how long you have known him?

A. I would say approximately two or three years.

Q. Have you ever had any discussions with him?

A. Only one.

(Testimony of Earl B. Scott.)

Q. Can you tell us when that was?

A. I believe sometime in the early part of this year or in the latter part of last year.

Q. Do you know where it was? A. I do.

Q. Who was present?

A. The only person that possibly could have been present, besides Scheuermann and myself, could have been a girl working in our office who takes care of the counter.

Q. Do you know whether or not she was present?

A. I couldn't answer that definitely. I don't recall.

Q. Now, will you tell us how you happened to have this conversation with Mr. Scheuermann?

A. I was called to the counter and told that Scheuermann wanted to see me.

Q. And can you tell us who started the conversation and who said what?

A. Mr. Scheuermann started the conversation. He said that he [1159] would like to get back into Lodge 504.

Q. And what did you tell him?

A. I told him he would have to see Mr. Gorham. Mr. Gorham had been assigned to take care of Lodge 504 and I never injected myself into those matters on reinstatements or initiations, things like that. I never handle that.

Mr. Bamford: Just a minute. May I have the question and answer read back, please?

(Question and answer read.)

(Testimony of Earl B. Scott.)

The Witness: Proceeding further, I told Mr. Scheuermann that I would be very happy to make an appointment for him to meet with Mr. Gorham. Mr. Gorham was not in at that time and I did make an appointment and Scheuermann did come in and see Mr. Gorham. That is the full extent of my conversation with Mr. Scheuermann.

Q. (By Mr. McGraw): And when did Mr. Scheuermann come to see Mr. Gorham?

A. If my memory serves me correctly, it was the next day.

Q. And did he mention anything about being terminated at Westinghouse, Sunnyvale Plant?

A. No.

Mr. Bamford: Just a second. You mean at the conversation he had with the witness?

Q. (By Mr. McGraw): I am referring now to your discussion with Mr. Scheuermann. [1160]

A. That is true.

Q. Did he mention anything about having been terminated? A. No, he did not.

Q. Did he mention anything about having been expelled by the IA of M? A. No, he did not.

Q. Did you tell Mr. Scheuermann that he could rejoin the IA of M and get straightened out if he paid his dues and reinstatement fees and a \$500 fine? A. Absolutely not.

Q. Did you look at Mr. Scheuermann's membership record before you spoke with him?

A. I did not.

(Testimony of Earl B. Scott.)

Q. Did you refer to it at any time during the conversation? A. I did not.

Q. When the girl came to you to tell you that Mr. Scheuermann wanted to see you, did she bring his membership record? A. She did not.

Q. Did she tell you that she had destroyed or torn up an application made by Scheuermann?

A. She did not.

Q. Did she tell you that Mr. Scheuermann had filled out any card or paper? A. She did not.

Q. Did you ever instruct her to tear up any paper signed by [1161] Scheuermann?

A. Absolutely not.

Q. Did—Strike that. In the normal course of business, what kind of papers are filled out at the counter?

A. Applications for initiations, applications for reinstatements, applications for employment of both members and non-members, applications for withdrawal cards, excuses for attendance at meetings. There must be some others, but they don't come to my mind at the moment.

Q. Now, do you also fill out any forms in connection with unemployment? A. We do.

Q. Did anyone report to you, or inform you in any manner, that Mr. Scheuermann had filled any form out prior to his conversation with you?

A. Absolutely not.

Q. Did Scheuermann ask how much he owed the union? A. He did not.

(Testimony of Earl B. Scott.)

Cross-Examination

By Mr. Bamford: [1162]

* * *

Q. Did Mr. Gorham tell you that he was planning to request Scheuermann's termination?

A. He did not.

Q. How did you first hear of it then?

A. I saw the notices—or not the notices—but the list of drops and the suspensions. They were laid on my desk by all the business agents, the same as the initiations—the same as the initiations and reinstatements in all of the locals.

Q. What do you mean by a "drop"?

A. A drop is where a man fails to keep his dues up. He is dropped from membership.

Q. Well, what does it look like? Is it a piece of paper?

A. What, a drop?

Q. Yes. You said you had seen all the drops. What does a drop look like?

A. Well, I don't know whether you are trying to be cute on this thing or not, but a drop is a man who has been dropped from membership because he hasn't kept his dues paid up. [1163]

Q. Well, is that put on some form?

A. Yes, there is a regular list of those members who have been dropped. Maybe you would understand it a little better if I said suspended from membership. We call them drops.

Q. And Scheuermann's name appeared on a list?

A. I don't know whether it was on a list. I don't

(Testimony of Earl B. Scott.)

know what list it was on or what month it was or anything like that, but anybody who has been a member and is no longer a member, his name is put on a list and it is laid on my desk each month when the books are closed. That applies to all locals because I like to know who has let themselves go delinquent. The same thing would apply, in any of the cases, where communications are sent to companies requesting that people be laid off. The copies of those communications are laid on my desk. [1164]

* * *

Q. But at no time did Gorham ever ask you about the validity of Scheuermann's discharge, is that correct?

A. Not to my knowledge. I would be very much disappointed if people who worked under me would have to come to me and ask me the legality of things. They are assigned to take care of the thing and that is their job.

Q. Did you talk with either the reception girl or with Gorham, any time, about the paper Scheuermann had filled out when he came in to see you?

A. No.

Q. Neither of them mentioned that Scheuermann had filled out a paper?

A. Neither mentioned that Scheuermann had filled out a paper.

Q. Do you know that he had filled out a paper?

A. No, I still don't know it.

Q. Do you know why Scheuermann had been fined and expelled?

A. Yes, at the time I did. [1168]

* * *

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 504,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board, Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled "In the Matter of Westinghouse Electric Corporation (Sunnyvale Plant) and Clyde W. Scheuermann, an Individual, Case No. 20-CA-328," and "In the Matter of International Association of Machinists, Local No. 504, and Clyde W. Scheuermann, an Individual, Case No. 20-CB-102." Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said consolidated proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Frederic B. Parkes Trial Examiner for the National Labor Relations Board, dated August 29, 1950.

(2) Stenographic transcript of testimony taken before Trial Examiner Parkes on August 29, September 5, 7, 8, 12, 13, 14, 15, 18 and 20, 1950, together with all exhibits introduced in evidence.¹

(3) Deposition of Earl B. Scott, taken on September 25, 1950, by Louis Penfield, officer designated by the Trial Examiner. (Attached to Item 2 above.) (Received in evidence in Trial Examiner's Intermediate Report, dated March 15, 1951, page 3.)

(4) Joint telegraphic request of all parties for extension of time for filing briefs with Trial Examiner, dated October 2, 1950.

(5) Copy of Chief Trial Examiner's telegram, dated October 3, 1950, granting all parties extension of time for filing briefs.

(6) Certificate of Officer taking deposition, dated October 17, 1950.

(7) Joint telegraphic request of Westinghouse Electric Corporation and Respondent Union, dated

¹Volume II of the certified record commences with numeral page 5. On September 1, 1950, the General Counsel moved orally for continuance of the hearing to September 5, 1950, and the Trial Examiner granted the motion. Pages 1 to 4 were set aside for transcription of said motion and order; however, the transcription was never effected. (See footnote 5 of Trial Examiner's Intermediate Report, dated March 15, 1951, for recordation of the proceedings of September 1, 1950.)

October 25, 1950, requesting further extension of time for filing briefs with the Trial Examiner.

(8) Copy of Chief Trial Examiner's telegram, dated October 25, 1950, granting all parties further extension of time for filing briefs.

(9) Joint telegraphic request of Westinghouse Electric Corporation and Respondent Union, dated November 8, 1950, requesting still further extension of time for filing briefs with the Trial Examiner.

(10) Copy of Chief Trial Examiner's telegram, dated November 10, 1950, granting all parties still further extension of time for filing briefs.

(11) Trial Examiner's order correcting transcript, dated February 27, 1951, together with affidavit of service and United States Post Office return receipts thereof.

(12) Copy of Trial Examiner's Intermediate Report, dated March 15, 1951 (annexed to Item 17 hereof); order transferring cases to the Board, dated March 15, 1951, together with affidavit of service and United States Post Office return receipts thereof.

(13) General Counsel's telegram, dated April 4, 1951, requesting extension of time for filing exceptions and brief.

(14) Copy of Board's telegram, dated April 5, 1951, granting all parties extension of time for filing exceptions and briefs.

(15) Exceptions to the Intermediate Report, received from Westinghouse Electric Corporation on April 16, 1951.

(16) General Counsel's exceptions to the Intermediate Report, received April 17, 1951.

(17) Copy of Decision and Order issued by the National Labor Relations Board on September 28, 1951, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 22nd day of May, 1952.

[Seal] /s/ LOUIS R. BECKER,
Executive Secretary.

NATIONAL LABOR
RELATIONS BOARD.

[Endorsed]: No. 13400. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. International Association of Machinists, Local No. 504, Respondent. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed May 26, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13400

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 504,
Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, International Association of Machinists, Local No. 504, San Jose, California; its officers, representatives, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "In the Matter of Westinghouse Electric Corporation (Sunnyvale Plant) and Clyde W. Scheuermann, an Individual, Case No. 20-CA-328," and "In the Matter of International Association of Machinists, Local No. 504, and Clyde W. Scheuermann, an Individual, Case No. 20-CB-102."

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on September 28, 1951, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, representatives, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Upon the entire record in these cases, and pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that International Association of Machinists, Local No. 504, San Jose, California, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Westinghouse Electric Corporation (Sunnyvale

Plant), its officers, agents, successors, and assigns, to discharge or in any other manner to discriminate against its employees with respect to whom membership in the Respondent Union has been denied or terminated upon some ground other than failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership or to discharge or in any other manner to discriminate against its employees in violation of Section 8 (a) (3) of the Act;

(b) Restraining or coercing employees of Westinghouse Electric Corporation (Sunnyvale Plant), its officers, agents, successors, and assigns, in the exercise of their right to engage in or to refrain from engaging in any and all of the concerted activities guaranteed to them by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Notify Westinghouse Electric Corporation (Sunnyvale Plant) in writing that it withdraws its objections to the employment of Clyde W. Scheuermann and requests it to offer him immediate and full reinstatement to his former or a substantially equivalent position, without

prejudice to his seniority or other rights and privileges;

(b) Notify Clyde W. Scheuermann in writing that it has advised Westinghouse Electric Corporation (Sunnyvale Plant) that it withdraws its objections to his re-employment and requests it to offer him immediate and full reinstatement;

(c) Make whole Clyde W. Scheuermann for any loss of pay he may have suffered as a result of the discrimination against him in the manner set forth in the section entitled *The Remedy*;

(d) Post in conspicuous places in its business office at San Jose, California, where notices are customarily posted, copies of the notice attached hereto as Appendix A. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent Union's official representatives, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material;

(e) Mail to the Regional Director for the Twentieth Region signed copies of the notice attached hereto as Appendix A for posting, the

Employer willing, at its plant in places where notices to employees are customarily posted. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by the Respondent Union's official representatives, be forthwith returned to the Regional Director for said posting;

(f) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the date of this Order what steps it has taken to comply herewith.

(3) In the event that the Board's Order, heretofore set forth, is enforced by a decree of this Court, it is hereby further respectfully requested that the notice attached hereto and made a part hereof shall be amended by deleting therefrom the words "A Decision and Order," and there shall be inserted in their stead the words "A Decree of the United States Court of Appeals Enforcing an Order."

(4) On September 28, 1951, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(5) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evi-

dence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, its officers, representatives, agents, successors, and assigns, to comply therewith.

NATIONAL LABOR
RELATIONS BOARD.

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this 22nd day of
May, 1952.

Appendix A

Notice to All Members of International Association of Machinists, Local No. 504, and to All Employees of Westinghouse Electric Corporation (Sunnyvale Plant).

Pursuant to

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

We Will Not cause or attempt to cause Westinghouse Electric Corporation (Sunnyvale Plant) to discharge or in any other manner to discriminate against its employees in violation of Section 8 (a) (3) of the Act, or to discharge or in any other manner to discriminate against employees with respect to whom membership in our union has been denied or terminated upon some ground other than failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

We Will Not restrain or coerce employees of Westinghouse Electric Corporation (Sunnyvale Plant) in the exercise of their rights to engage in or to refrain from engaging in any or all of their concerted activities guaranteed to them by Section 7, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We Will Notify Westinghouse Electric Corporation (Sunnyvale Plant) in writing and furnish a

copy to Clyde W. Scheuermann, that we have withdrawn our objections to the employment of Scheuermann and that we request his reinstatement.

We Will make Clyde W. Scheuermann whole for any loss of pay he may have suffered because of the discrimination against him.

Dated

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 504.

(Union)

By

(Representative) (Title)

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed May 26, 1952.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
PETITIONER INTENDS TO RELY

In this proceeding petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board properly found that the Respondent Union violated the Act by causing the Company to discriminate against an employee to whom union membership had been refused for reasons other

than failure to tender periodic dues and initiation fees.

2. The Board properly found that by causing the Company to discriminatorily discharge its employee, Respondent thereby coerced and restrained the Company's employees in the exercise of rights guaranteed by the Act.

Dated at Washington, D. C., this 22nd day of May, 1952.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

[Endorsed]: Filed May 26, 1952.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To: International Association of Machinists, Local No. 504, Room 208, Temple Bldg., 45 Santa Teresa Street, San Jose, California, and Westinghouse Electric Corporation, Sunnyvale, California.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A., Title 29 (National Labor

Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 26th day of May, 1952, a petition of the National Labor Relations Board for enforcement of its order entered on September 28, 1951, in a proceeding known upon the records of the said Board as "In the Matter of Westinghouse Electric Corp. (Sunnyvale Plant) and Clyde W. Scheuermann, an Individual, Case No. 20-CA-328," and "In the Matter of International Association of Machinists, Local No. 504, and Clyde W. Scheuermann, an Individual, Case No. 20-CB-102," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 26th day of May, in the year of our Lord one thousand nine hundred and fifty-two.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Received May 27, 1952.

Returns on Service of Writ attached.

[Endorsed]: Filed June 5, 1952.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To: International Association of Machinists, 9th
and Mt. Vernon Place, N.W., Washington, D. C.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A., Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 26th day of May, 1952, a petition of the National Labor Relations Board for enforcement of its order entered on September 28, 1951, in a proceeding known upon the records of the said Board as "In the Matter of Westinghouse Electric Corporation (Sunnyvale Plant) and Clyde W. Scheuermann, an Individual, Case No. 20-CA-328," and "In the Matter of International Association of Machinists, Local No. 504, and Clyde W. Scheuermann, an Individual, Case No. 20-CB-102," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth

Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 26th day of May, in the year of our Lord one thousand nine hundred and fifty-two.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Return on Service of Writ attached.

[Endorsed]: Filed June 10, 1952.

[Title of Court of Appeals and Cause.]

RESPONDENT'S ANSWER AND CROSS-
PETITION TO DISMISS PETITION FOR
ENFORCEMENT OF AN ORDER OF NA-
TIONAL LABOR RELATIONS BOARD

To the Honorable the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board's¹ Petition for Enforcement results from a consolidated complaint and proceeding and known upon the records of the Board as "In the Matter of Westinghouse Electric Corporation (Sunnyvale Plant) and Clyde W. Scheuermann, an Individual" (96 NLRB No. 71).

¹Hereinafter referred to as the Board.

In support of its answer to the Board's Petition, the Respondent respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interests of its members in the State of California, within the judicial circuit, where the unfair labor practices are alleged to have occurred. Respondent admits that this Court, therefore, has jurisdiction of this Petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended, 61 Stat. 136.

(2) Respondent admits that the Board conducted the hearing and record thereof certified by the Board and filed with this Court herein.

(3) Respondent admits that the Board, on September 28, 1951, issued its Decision and Order in the matter before this Court for review.

(4) Respondent admits that the Board's Decision and Order was served upon it on September 28, 1951.

(5) Respondent denies that it has committed any unfair labor practices, either as indicated in the Petition for Enforcement or its Order or otherwise.

(6) Respondent asserts that the Board's findings of fact and conclusions of law that the Respondent violated Sections 8 (b) (2) and 8 (b) (1) (A) of the National Labor Relations Act, as amended, 61 Stat. 136, are not supported by substantial evidence on the record, as a whole.

As and for further answer and by way of Cross-Petition, the Respondent states as follows:

(1) That there is no substantial evidence on the record, as a whole, to support the Board's findings of fact and conclusions of law.

(a) That the Board improperly found that the Respondent violated the Act by causing the Company to discriminate against the employee to whom union membership was denied, for the reason that the Respondent's duty to decide Scheuermann's membership status was never put to a test.

(b) The Board's conclusion that Scheuermann's discharge was ostensibly for the reason of his non-payment of a fine is based on conjecture and surmise, and is unsupported by the record.

(c) There is no substantial evidence to support the finding that the Respondent would not have refrained from requesting Scheuermann's discharge even if he had timely offered dues and a new initiation fee.

(d) The Board's conclusion that a tender of dues by Scheuermann would have been a futile gesture is erroneous.

(e) The Board's conclusion that the Respondent's "true" motive for causing the discharge of Scheuermann was for the reason that he failed to pay his fine subsequent to expulsion from the Union is not supported by evidence on the record, as a whole.

(2) Sections 8 (a) (3) and 8 (b) (2) of the National Labor Relations Act show clearly that under

the circumstances of this case, Scheuermann had a legal obligation, under the Act, to tender periodic dues and initiation fees uniformly required as a condition of acquiring, or retaining, membership, or else fail to do so at his peril.

(3) Respondent states that Scheuermann's discharge was caused solely for the reason that he failed to comply with the provisions of a valid contractual agreement which required membership in the union on or after the 30th day of employment.

(4) The Respondent asserts that it had no illegal motive when it caused Scheuermann's discharge and that, therefore, such discharge was not an unfair labor practice within the meaning of the Act.

Wherefore, Respondent prays this Honorable Court take jurisdiction of the proceedings herein and make and enter an order and decree dismissing the Petition for Enforcement and Order of the Board, in its entirety, and to set aside and dismiss the Board's Decision and Order in the above matter.

/s/ PLATO E. PAPPS,

Counsel, International Association of Machinists.

Dated at Washington, D. C., this 14th day of June, 1952.

[Endorsed]: Filed June 16, 1952.

